



## Digital

### Digital Platform regulation in Thailand

Draft of a Royal Decree on regulating Digital Platform (the “Draft Royal Decree”) was proposed as a subordinate law under the Electronic Transactions Act of Thailand B.E.2544 (2001) (“ETA”) which will be under the supervision of Electronic Transactions Commission. The main objective of this Draft Royal Decree is to regulate a platform consisting of at least Digital Platform Operator, Business Users and End User/ Consumers.

The term “Digital Platform Operator” has been defined as operator that provides a space for connections between Business Users and End User/ Consumers.

Digital Platform Operators under this Royal Decree include all of digital platforms having an intention to provide services to the End Users in Thailand regardless of the residency factor. It means that any foreign digital platform provides the service to End Users in Thailand will be subjected to the Draft Royal Decree as well.

The key role of the Digital Platform Operator is to inform the relevant authorities of its intent to do business in Thailand prior to the operation through electronic platform while the process will be announced by Electronic Transactions Commission. The required information in order to submit to the authorities will depend on the criteria and scale of each of digital platforms.

Whilst the foreign platform operators shall appoint their representatives to hold responsibility for their services in Thailand.

In addition, the Electronic Transactions Office will require the large scale of Digital Platform Operators to register its business in order to create the trust and confidence of the End Users.

The violation of this Draft Royal Decree will result in the prohibition of operations or withdrawal of business.

During the public hearing on 15 July 2021, there were the feedbacks arisen from the participants as follows:

- The main concern is that this Draft Royal Decree seems to overlap with other existing Thai laws since there are the specific laws directly governing the concerns under this Draft Royal Decree. The specific laws include Trade Competition Act, Personal Data Protection Act, and Consumer Protection Act:
- The board and ambiguous definition of the “Digital Platform Operators” under the Draft Royal Decree:
- Too much power given to the ETDA official in accordance with section 16 of Draft Royal Decree:
- Inequality between Thai digital platform operators and foreign digital platform operators:
- Burden of the digital platform operators to submit the required information without necessity to the ETDA as they are already required to submit the same set of information to other Thai governmental authorities:
- Unclear criteria on the scale of the digital platform business (i.e., large scale); and
- Severe punishment.

### Decentralized finance (DeFi) in Thailand

There is no specific laws or regulations governing DeFi activities in Thailand. However, the most relevant regulations governing DeFi is the Digital Asset Business Act of Thailand B.E. 2561 (2018) (“DAB”) which regulates offering and providing of services of digital assets, including cryptocurrencies and digital tokens. According to DAB, an issuance of digital tokens is required to be approved by the Office of the Security Exchange Commission (“SEC”). As a result, the issuer of digital tokens must disclose the required information

and conduct initial coin offering (“ICO”) through the ICO Portal which is approved by the SEC.

If the nature of activity is considered as a type of digital asset business under DAB, it shall comply with DAB. Failure to comply with the rules will be regarded as an offence under DAB.

However, activities occurring in DeFi fall outside the scope of the digital asset business under the DAB, it will not be governed by the SEC which leads to current problems. This could be seen that the Thai Digital Asset Association (the “Association”) warned investors of the risks of investing on DeFi, as well as that the Association cannot act as an intermediary in a legal dispute after Genesis which is a Defi platform claimed that the Association would serve as intermediary in indemnification for any damage caused by fraud. In addition, some token holders said that they have not notified the SEC on this dispute because they knew that Defi platform was not regulated by the SEC.

Currently, it seems that there is no laws or regulations governing these DeFi activities, but in practice, if any activity involves a deceptive manner obtaining another person's property, it may be deemed as a fraud or an offense under Cyber Security Maintenance Act (“CSM”), Electronic Transaction Act (“ETA”), and Anti- Money Laundering Act (“AMLA”).

#### **MDES Notification on Criteria on Storing Computer Traffic Data of Service Providers B.E. 2564 (the “Notification”)**

On 14 August 2021, the new Criteria on Storing Computer Traffic Data of Service Providers was issued by the Ministry of Digital Economy and Society (“MDES”) in replacement of the previous criteria which had become effective since 2007.

The service providers will be subjected under the Notification including (i) providing Internet access to the public or enable communication available between persons in other ways through computer systems covering the telecommunication and broadcast carrier, access service provider, host service provider, online application store, and social media service provider; or (ii) store computer data for benefits of other persons including content and application service provider,

cloud computing service provider, and digital service provider. Generally speaking, most service providers of popular platforms like App store, Google play, Facebook, YouTube, Instagram, WhatsApp, Clubhouse and Telegram are technically under the Notification.

The regulated service providers are required to arrange verification and authentication, data retention, and CCTV available to all users. Particularly, applicable technology used for verification and authentication must also meet the requirements and minimum standards for reliability and electronic means under the ETA. This obligation applies to the event that a service provider hires a third party to store the computer traffic data on its behalf.

Furthermore, the service providers must store the computer traffic data for a certain period. However, such period may be extended in case there is any reasonable cause to suspect that there would be any offence under the Computer Crime or in relation to the national security, terrorism, public interest or required by an inquiry officer.

#### **New Digital Currency issued by Bank of Thailand expected to be launched by 2022**

On 19 August 2021, the Bank of Thailand (“BoT”) announced that it is preparing a pilot test of Digital Currency issued by the Retail Central Bank Digital Currency (“Retail CBDC”) by allowing industry participants to develop and connect the system at the same time. It is expected to start in the second quarter of 2022 in a limited way within the BOT before expanding to the public.

In this regard, the BoT released the results of a study on the impact of the Retail CBDC on the Thai financial sector, and the results of public surveys in order to use as a guideline for the development of the Retail CBDC and Pilot Test. The keys points are summarized as follows:

1. The main characteristics of the Retail CBDC would consist of the following:
  - a form similar to cash and does not offer depositors interest rates

- relying on intermediaries such as financial institutions to trade the Retail CBDCs with the public
  - there would be a number of conditions or periods for Retail CBDC exchanges
2. the Pilot Test of Retail CBDC are composed of two plans as the following:
- Foundation Track which is expected to be launched by the second quarter of 2022 in order to test and evaluates the use of the Retail CBDC in receiving, redeeming, or using it to pay for goods or services
  - Innovation Track which is made for the purpose of evaluating the development guidelines for further use of the Retail CBDC in various cases. The BOT will also allow the private sector or technology developers to participate in the test.

Currently, the format and criteria of both tracks are considered by the BoT.

## COVID-19 Updates

### Measures to relieve difficulty on contacting government authorities during the COVID-19

On 3 August 2021, the Thai Cabinet passed its resolution on measures to relieve difficulty on contacting government agencies during the COVID-19 pandemic as proposed by the Office of the Public Sector Development Commission (“OPDC”). The measures are summarized below:

- Extending the license renewal period, the notification period, the tax payment period, or any other payments that an individual has to pay to government agencies until 31 December 2021 in order to alleviate the suffering individual affected by the economy.
- Suspension or exemption of fines, penalties, surcharges, or any other payments that the law requires additional payment in case of any delay.
- If the extended period has passed, the government agencies shall consider extending such period to be in accordance with the announcement regarding the extension of the period for declaring an emergency situation according to the Emergency Decree on

Public Administration B.E. 2548 (2005) until there is a cancellation of such announcement.

- The government agencies must consider applying digital technology to provide public services from beginning to end of the process with the purpose of facilitating an individual on contacting government agencies.

### RT-PCR test can be used as a proof of COVID-19 claim

On 6 August 2021, the Secretary-General of the Office of Insurance Commission (“OIC”) approved to issue the Registrar's Order No. 45/2021 and No. 46/2021 regarding the use of a RT-PCR test issued by any laboratories authorised by the Department of Medical Sciences instead of a medical certificate from hospital for COVID-19 claims in order to alleviate the affected individual and protect the benefits of the insured person during the hard time of the pandemic.

These orders require insurance companies for both life insurers and non-life insurers to accept the RT-PCR test for payment of benefits under the Covid insurance policy. This will not only facilitate customers, but also provide faster of claim settlement process.

The aforementioned orders shall apply to claims under insurance policies which insurance companies issued to the insured both before and after the date of these orders onwards.

### REIT Buy-Back on Freehold and Leasehold Properties

As to the severe impacts of Covid-19 pandemic on many businesses especially on property market. To alleviate an unhealthy situation and support business operators, the SEC has announced the new regulations on Real Estate Investment Trusts (“REITs”) that the REIT Manager is allowed to invest in assets including hotel, hospital, shopping mall or office building with buy-back conditions from the property owners both in freehold and leasehold properties. In addition, in case of the necessity, the REITs may temporarily operate other of those businesses other than renting assets. Kindly be noted that the necessity which allows the REITs to operate other businesses refers to only the

condition that there is a change of lessee or the process of seeking a new lessee is ongoing.

The key requirements can be summarized as follows:

- A property owner shall have obligation or option to buy assets back from the REITs. In this case the sale and purchase agreement of the asset shall specify a specific date and an agreed price.
- REITs with a buy-back obligation can be offered to all types of investors or only to Institutional Investors or Ultra High Net Worth Investors (“UHWI”) while REITs with buy-back option can be only offered to Institutional Investors or UHWI.
- With regard to the REITs which invests in the leasehold property, the lessor and REITs as the lessee are allowed to include the termination clause with the compensation at the agreed price paid to the REITs.
- The property owner shall be a juristic person and shall not be under any restrictions to hold such property.
- The REIT is required to invest only in the completed property which is ready to generate income

### **The Civil Court decided that part of Notification issued under the Emergency Decree deprives right and freedom of expression**

As it became known to the public that, on 29 July 2021, the Thai Prime Minister released the Notification issued under Section 9 of the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005) (No. 29) (“Notification”) which has been widely criticized among Thai people whether such Notification is in contrary to the Constitution of the Kingdom of Thailand (the “Constitution”).

The petition has been brought to the Court in order to revoke the enforcement of the Notification since it deprives the rights and freedom of expression of Thai people. On 6 August 2021, the Court conducted the preliminary hearing of such motion and examined as follows:

1. Clause 1 of the Notification which prohibits the dissemination of information having a risk of frightening people is beyond the term “misrepresentation” and deprives right and freedom of expression given by the Constitution.
2. The term “information having a risk frightening people” is also ambiguous which may lead to a broad interpretation. As a result, those who works in the media industry will unreluctantly express their opinion which is in contrast to the freedom protected by the Constitution.
3. Clause 2 of the Regulation which authorizes the National Broadcasting and Telecommunications Commission (“NBTC”) to suspend internet services of IP address of those who have disseminated the information in contrast to the Notification is incompatible with Article 36 of paragraph 1 of the Constitution.

As a result, the Court granted a temporary restraining order to suspend the enforcement of those two Clauses of the Regulation which results in cancelation of the Regulation on 10 August 2021.

### **Factory License Annual Fee Exemption Announced**

Due to the surge of the covid Pandemic, which continues to affect the industrial sector and the overall economic condition of the country and cause factory operators to experience business difficulty, the Ministerial Regulation was published in the Royal Gazette dated 13 August 2021, by waiving annual fees for all factories under Category 2 and Category 3 for the period from 10 June 2021 to 9 June 2022 which reduces the burden and alleviates the impact on factory operators.

To be explicit, manufacturers in Thailand are classified into three types:

Category 1: No license required, which includes factories that use machinery with 5-20 horsepower and/or employ 7-20 employees for manufacturing. The manufacturer, on the other hand, must adhere to the ministerial regulations.

Category 2: Notify the Department of Industrial Works before beginning manufacturing operation. The factories that use machinery with more than 20 horsepower but less than 50 horsepower and/or employ



more than 20 but less than 50 employees for manufacturing: the manufacturer must notify the Department of Industrial Works before beginning operation and, of course, must comply with the ministerial regulations.

Category 3: Before factory activities can begin, a factory license must be obtained, a factory is described as factory that utilizes machinery with more than 50 horsepower, and/or employ more than 50 employees for manufacturing.

It should be noted that an issuance of the factory license is at the discretion of the Ministry of Industry.

### **The Customs Department has announced temporary measures to ease importers and exporters during the third wave of the covid pandemic**

Due to COVID-19 situation, it leads the severe and board effect on Thai economy for both legal entities and individuals in various aspects including import and export businesses and it seems to be a delay for the recovery of the economy.

Previously, the Customs Department issued Notification No. 189/2017 dated December 29, 2017, allowing those, who would like to appeal the customs duty assessment, may file a request for pending customs duty payments which shall be submitted with security with the purpose of guarantee for customs duty payments. By having strict requirements, it results in suffering in the businesses or individuals during the COVID-19 situation.

Therefore, to alleviate the suffering of importers and exporters affected by the COVID-19 and increase financial liquidity. The Customs Department has therefore issued the Notification of Customs Department No. 103/256 (“Notification”) dated 1 July 2021 regarding the rules, procedures and conditions for requesting for a temporary stay of customs duty payments during the COVID-19 situation.

This Notification allows anyone who appeals against the decision on duty assessment from 1 July 2021 to 30 September 2021 to submit a temporary stay request directly to the Legal Division of the Customs

Department and to be able to submit the following documents as a security:

1. A credit-based letter of guarantee; and
2. For anyone who previously submitted the bank guarantee as a security can reuse such guarantee for the outstanding customs duty payments.

In addition, On 28 June 2021, the Regulation of the Customs Department regarding the suspension or reduction of fines (No. 2) B.E.2654 (2021) was issued for assisting importers or exporters who do not pay duty within the specified period without intention to evade customs duty payments. In order to gain these benefits, the customs duty payments according to the duty assessment must be paid to the Customs Department from 1 June 2021 to 30 September 2021.

### **Extension of 7% VAT rate for another 2 years and providing tax measures for assisting people who suffer from the COVID-19 situation**

On 24 August 2021, the Thai Cabinet passed its resolution to remain VAT rate at 7% for all sales of goods, provisions of services or imports of goods or service for another 2 years from 1 October 2021 to 30 September 2023 with the purpose of increasing liquidity and alleviating the impact from the covid pandemic.

In addition, the Revenue Department has implemented tax measures to mitigate the impact of the people who suffer from the COVID-19 situation as follows:

1. Extension the deadline for tax return filings, and payments which includes withholding tax, VAT, and specific business tax via the Internet:
  - For August 2021, extending the deadline from 15 September 2021 or 23 September 2021 to be within 30 September 2021
  - For September 2021, extending the deadline from 15 October 2021 or 23 October 2021 to be within 29 October 2021
  - For October 2021, extending the deadline from 15 November 2021 or 23 November 2021 to be within 30 November 2021
  - For November 2021, extending the deadline from 15 December 2021 or 23 December 2021 to be within 30 December 2021

However, these extensions do not include for tax return filings and payment on specific business tax for the sale of immovable property for commercial or profit purpose.

2. Extension of the deadline for tax return filing and tax payment on half-year corporate income tax for the tax year 2021 (PND 51) from within August 3, 2021, to September 22, 2021, to within September 23, 2021.
3. Extension of deadline for tax return filing and tax payment on half-year personal income tax for the tax year 2021 (PND. 94) from within 8 October 2021 to within 30 December 2021.
4. Exemption or reduction of the penalty in case that individuals and companies are unable to file the tax return on VAT and specific business tax within the deadline or submit a return in error from September to December 2021 respectively. Therefore, if individuals or companies submit the tax return form within 3 months from the deadline which has been extended above and pay taxes and surcharges in full, the penalty will be exempted. The penalty will be reduced to the rate 2% when paying tax at least 25% of the tax payable.
5. Reduction of the fine in such cases to the lowest rate. If there is a fine of not more than 2,000 baht, reduced to 1 baht, if there is a fine of not more than 5,000 baht, reduced to 2 baht

#### **Temporary cessation of employer's business in the COVID-19 situation**

During this hard time, there might be a number of questions raised by the employer whether or not the employer can exercise the temporary cessation rights under Thai law.

Thai laws allow that in case where it is necessary for an employer to temporarily cease the business operation, wholly or partly, for whatever cause, the employer may exercise the temporary cessation rights right away. However, it shall follow the conditions set forth under the laws.

During the period that the employee exercises the right, the employee may go to work for another employer. However, after the temporary cessation period set by the employer has passed, the employee must return to work for the employer, otherwise the employer may terminate an employment contract.

On the other hand, in relation to a force majeure affecting the employer's business operation, if an employer would like to temporarily cease the business operation where the employer may not pay wages to an employee, the employer shall give an advance written notice to the employee and the Labour Inspector prior to the date of business cessation or shall inform via Department of Labor Protection and Welfare website.

## **VISA**

### **A plan for Long-stay visas to four groups of foreigners**

The Centre for Economic Situation Administration ("CESA") intended to propose to the government a scheme that would let wealthy foreigners to get long-stay visas in Thailand. Long-stay visas will be granted to four groups of foreigners: rich global citizens, wealthy retirees, wealthy professionals working in Thailand, and highly skilled professionals. These groups of people will be granted a visa for up to ten years and will be able to acquire land and property.

There are no age restrictions for "rich global citizens," but they should indeed invest at least USD 500,000 in government bonds, property, or foreign direct investment. They must also have earned at least USD 80,000 in the last two years and have assets worth at least around USD 1 million.

Meanwhile, wealthy retirees must be 50 or older, earn USD 40,000 each year, and invest USD 250,000 in government bonds or real estate.

Professionals interested in working from Thailand, including persons who work remotely or employees of large corporations nearing retirement, must earn USD 40,000 per year, have a master's degree or higher, or intellectual property rights, and have five years of research experience.

Experts in digital products should therefore engage for SET-listed businesses or for at least three years in private sector companies with annual revenues of more than USD 50 million. To work in target industries or as academic specialists in universities or governmental agencies, high-skilled people with no age restrictions are necessary.

Further details of the plan will be announced when the plan is approved by the cabinet.

## Financial

### **Debt holiday plan issued by Bank of Thailand**

BoT has announced a debt moratorium proposal, which would offer a two-month debt holiday for individuals and small and medium-sized enterprises (“SMEs”) who have been directly impacted by the government's newest lockdown measures. Employees and employers in 13 provinces who have temporarily closed their businesses as a result of the tougher lockdown restrictions are the focus of this strategy. Strict measures, such as a curfew and the closure of some businesses, travel outside the province etc.

In addition, the BOT intends to work with related parties such as the Government Financial Institutions Association and non-bank lending institutions to broaden the debt suspension procedures to encompass as many borrowers as possible.

Moreover, the Government Savings Bank (“GSB”) would halt principal and interest payments for its customers in the 13 impacted provinces beginning in July for a six-month period.

Depending on the borrower, the procedure begins with instalment payments for July or August. Borrowers who would like to apply for this debt suspension method may do so beginning on 19 July 2021.

### **The SEC announced the Draft Notification regarding the retention of customer’s assets**

On 23 August 2021, the SEC prepared a draft of the Notification regarding the business conduct including the retention of customer’s assets in order to enhance the supervision of digital asset operators which is currently in the draft process.

The draft Notification of the SEC on Rules, Conditions and Procedures for Undertaking Digital Asset Business (the “Draft”) provides additional rules concerning the

retention of customer’s assets which require business operators to follow.

1. The retention of customer’s money
  - Current rules: it must be separate from the money of the business operator and to be deposited with a commercial bank or other banks established by specific laws which must be clearly stated in the deposit account asaction is taken by a business operator for the benefit of customers
  - Additional rules: imposing a withdrawal or transfer of money in the account opened for the benefit of the customer to be in line with the principle of decentralization, multi-signing and check and balance.
2. The retention of customer’s money and digital assets
  - Prohibiting the use of assets of one customer for the benefit of another customer.
  - Requiring customer’s assets to be reviewed between the accounts created and the assets held for accuracy and up to date in every business day.
3. Using customer’s assets to procure benefits
  - Prohibiting the use of the customer’s money to procure profit by any other method than depositing it at a commercial bank. However, it can be negotiated on the interest rate with the customer not exceeding the rate actually received from the commercial bank.
  - Prohibiting the use of the customer’s digital assets. This includes lending the customer’s digital assets to other persons.

The Draft also requires the person who withdraws or transfers money in the account of 50 million baht or more to submit the following documents:

1. evidence showing that the customer has requested a withdrawal/transfer; and
2. Evidence of approval of the request for withdrawal or transfer of money according to the business operator's procedures.

In this regard, the business operator must comply with the aforementioned rules within 1 month from the effective date of the amended notification (its publication date in the Royal Gazette).

## Trade Competition

### **Fair Trade Practices Concerning Credit Term for SMEs Providing Products or Services**

Latest, the Trade Competition Commission announced its notification regarding the guidelines on fair trade practices concerning credit term for SMEs who provide products or services (the “Notification”). The Notification will fully be effective on 15 December 2021.

In accordance with the Notification, only SMEs that are (i) a manufacture having employees not more than 200 persons or having annual revenues not exceeding THB 500,000,000 (Five Million Baht); and (ii) service providers, retail business, or wholesale business having employees not more than 100 persons or having annual revenues not exceeding THB 300,000,000 (Three Million Baht), will be beneficial from this credit term regulation.

It should be brought to attention that the Notification specifies not only criteria for considering fair trade practices but also criteria for considering unfair trade activities. Particularly, there are three criteria for considering fair trade practices concerning the credit terms that are as follows:

- (i) Credit Term: this must not be longer than 30 or 45 days depending on business sectors; yet these terms may be determined otherwise with a reasonable reason.
- (ii) Term Counting for trade credit: the starting date is the date that the products or the services, as the case may be, together with relevant documents have been delivered completely. In case of consignment, the starting date will be the date that the products have been sold at the agreed quantity.
- (iii) Credit Payment: the credit payments process must clearly be expressed to SMEs in line with normal trade practices.

Last but not least, any action prolonging the payments for products or services after the regulated credit term without reasonable reasons; or change to the credit term or other conditions under the contracts without reasonable reasons or without a prior notice of more than 60 days would potentially cause such action by the SME’s business partner be regarded as unfair practices.

### **A Change to The Guidelines for Determination of Unfair Trade Practices in Franchise Business**

After, the Office of Trade Competition Commission (the “OTCC”) had issued the first guidelines for determination of unfair trade practices in franchise business in December 2019. In 2020, the OTCC then issued a notification or the Guidelines (No.2) to amend the clause 4 of the Guidelines, which at present, which is revoked and replaced by the OTCC Notification regarding the guidelines for determination of unfair trade practices in franchise business (No.3) (the “Guidelines (No.3)”).

Comparing with the Guidelines (No.2), the Guideline (No. 3) remains the main concept of clause 4 as amended in the Guidelines (No. 2), that for any branch expansion of any franchise business, a franchisor shall firstly inform and offer a right to open a new branch to its franchisee that is in the nearest area, except that the existing franchisee has not achieved the turnover amount set by the franchisor and has informed the franchisor of such amount in advance. Furthermore, the franchisee shall have a time limit of not less than 30 days for response.

In addition to the Guidelines (No.2), the Guidelines (No. 3) provide the three particular criteria for determining the ‘nearest area’ term i.e., (i) demands of products and services, (ii) relevant geography, and (iii) market competitive capacity.

Moreover, an exemption to the right of first refusal to open a new branch of the nearest-area franchisee has been introduced in the Guidelines (No. 3). Specifically, if (i) the franchisee and the franchisor have agreed on the area development term; and (ii) the franchisor gives the franchisee a right to operate a business in an agreed area; and (iii) there is a branch expansion condition under or attached to the franchising agreement, which basically does not allow the franchisor to give a right of first refusal to the nearest-area franchisee, the franchisor shall consider to give a right to open a new branch to other appropriate franchisees. The supportive reasons to the franchisors’ decisions must be reasonable in terms of business, marketing, or economy.

## **Narcotics**



### **Kratom is no longer a narcotic in Thailand**

Mitragyna Speciosa, also known as "Kratom", has been effectively excluded from the list of controlled narcotics under the Narcotics Act (No. 8) B.E. 2564 (2021) ("NA") published in the Royal Gazette on 26 May 2021. By this effectively decriminalizing, the consumption, production, disposal, import, export, and possession of Kratom for any medical purpose is legal.

However, for other purposes, the draft legislation governing the sale and consumption of Kratom plants recently approved by the Cabinet has still limited the scope of NA in the following circumstances: (i) license shall be obtained in case of cultivating, marketing, importing, or exporting Kratom for industry purpose and (ii) the sale of Kratom to juveniles and pregnant or nursing, as well as addressing concerns like as labeling, marketing, and distribution platforms is still forbidden.

Consequently, it should also be realized that the use of Kratom in the manufacturing of food and beverages and the use of Kratom in the creation of any type of narcotic substance is still prohibited and illegal.

## **Cross Boarder**

### **The G7 reaches an agreement on two-pillar solution on international tax reform**

On 1 July 2021, 130 countries of 139 countries including the G7 members in the Inclusive Framework ("IF") issued a statement addressing two-pillar approach which committed to fundamental changes to international tax system. However, there are 9 countries that have not signed the agreement such as Ireland due to the reason that Irish tax rate is 12.5%.

The statement provides the additional details of Pillar 1 which are summarized below:

- MNEs with global turnover above €20 billion, which will be reduced to €10 billion after 7 years contingent on success implementation, will be taxed at 20-30% of profit exceeding a 10% margin. This revenue will be shared among governments by using a revenue-based allocation rule.
- Introducing a new special purpose nexus rule which will allocate Amount A to a market jurisdiction when the in-scope MNE derives at least €1 million

in revenue from that jurisdiction. For small jurisdictions with GDP below €40 billion, the nexus will be set at €250,000.

- Profits and losses of the in-scope MNE will be measured using reference to financial accounting income, with a small number of adjustments. Losses will be carried forward.
- Applying a marketing and distribution profits safe harbor where the residual profits occur of an in-scope MNE are already taxed in a market jurisdiction.
- Double taxation will be eliminated through the exemption or credit method.
- Planning to apply the arm's length principle to in-country baseline marketing and distribution activities.

The statement provides the scope of Pillar 2, known as the GloBE rules, which are summarized below:

- The IF members agreed to impose minimum effective tax rate at least 15%.
- MNEs with consolidated revenues of EUR 750 million or more will be within the scope. However, countries can freely apply the income inclusion rule (IIR) to parent companies in their country even if the consolidated revenues do not meet the threshold.
- A formulaic substance carve-out that will exclude an amount of income that is at least 5% (in the transition period of 5 years, at least 7.5%) of the carrying value of tangible assets and payroll in a country, and a de minimis exclusion.
- Government entities, international organizations, non-profit organizations, Pension funds or investment funds, that are Ultimate Parent Entities (UPE) of an MNE Group, or any holding vehicles used by such entities, organizations or funds, are excluded from the GloBE rules.

However, there are remaining issues that need to be working on including removing digital-service taxes as proposed by the US and the implement plan of remaining issues will be finalized by October 2021, made to the law in 2022, and effective in 2023.

### **Cross-border Payment Linkage in Thailand**

On 17 August 2021, the Bank of Thailand or the BOT and the Bank Indonesia have announced a cross-border QR payment linkage between Thailand and Indonesia. Regarding this payment linkage, consumers and merchants in both countries will be able to make a transaction via cross-boarder QR payment for goods and services.

This payment linkage will provide a lot of benefits to Thailand and Indonesia by encouraging cross-border transactions. For example, regarding the tourism industry, there is a large number of tourists flows between the two countries every year, therefore this cross-border payment will be convenient for tourists to spend more money during their trips.

This cross-border payment system will be officially launched in 2022. Moreover, there is a plan for further development, such as a real-time fund transfers by referencing the recipient's mobile phone number.

In addition, apart from the cross-border payment linkage between Thailand and Indonesia, there is a project on real-time payment systems between Thailand and Singapore. In April 2021, the BO

T and the Monetary Authority of Singapore launched the world's first linkage of real-time payment system which links the system of Thailand's PromptPay and the System of Singapore's PayNow. Therefore, the customers of participating banks in Thailand and Singapore are able to transfer funds across the two countries, using just a mobile number. It is more convenient and easier than the traditional transfer of funds.

To conclude, these are some examples of development on payment system in Thailand and these are big steps for the ASEAN Payment Connectivity, aiming to promote financial integration in the region. Furthermore, Thailand will continue to promote the innovation in cross-border payments and infrastructure to strengthen financial integration for the sustained well-being of Thailand.

## **Tax Matters**

### **Tax Issues on Digital Assets in Thailand**

In Thailand, the Revenue Department or the RD has played a very important role to levy tax on the Thai digital assets.

Regarding taxation on digital assets, there are two points as follows:

#### 1. Assessable Income

The Revenue Code ("RC") provides that any profit share or any other similar benefits derived from holding or possessing digital tokens, and any benefit from transferring cryptocurrencies or digital tokens shall be deemed as an assessable income.

#### 2. Withholding Tax

A person, partnership, company, association or body of persons paying assessable income are subjected to withholding income tax at every time of payment with the rate of 15 percent of the income.

However, please be aware that there are no clear guidelines to explain the above taxation provided by the RD on how to calculate the value of the bundle of what is gained from the transfer of cryptocurrencies or digital tokens, or how to withhold tax. As a result, it remains unclear to the investors for paying a tax on such income and may create the loophole for money laundering since transactions can be made from anywhere and digital assets can be moved quickly and volatile.

### **The New Structure of Cigarette Tax**

The Excise Department ("Department") announced that the Department has completed the new structure of cigarette excise tax which is currently under review by the Minister of Finance before proposing to the Cabinet for consideration.

By using the current cigarette excise tax structure for a period of 4 years, it has been proven that the current cigarette tax structure was ineffective in terms of declining state revenues and tobacco control by the growth in using tobacco leaf which can be a substitute for cigarettes but has a much lower price than cigarettes.

In addition, the current tax structure has severely affected the performance of the Tobacco Authority of Thailand which in turn affects tobacco farmers who

have been reduced with their quota for buying tobacco by 50 percent for more than 3 years in a row.

Therefore, the new structure of excise tax levied on cigarettes would be based on 4 principles i.e., public health, farmer's income, preventing smuggling, and government revenue in which it is expected to gain an average of 60 billion baht per year.

Furthermore, the Director-General of the Department stated that the new tax structure would come into effect before 1 October 2021 replacing the current tax structure that levies tax on cigarette at 20 percent per pack costing up to 60 baht, and at 40 percent if the retail price exceeds 60 baht per pack.

However, the conclusion regarding the new structure of cigarette tax has not been confirmed and released which we will have to keep an eye on this matter.

### **Digital Tax Compensation System is slated to begin in Thailand**

The Customs Department of Thailand (the "Department") announced that its online payment system successfully operates, and the Digital Tax Compensation ("DTC") system will be effective on 21 September 2021. The Department expected that by implementing this system, the risk of Covid-19 transmission between the general population and customs officers will be decreased.

This is a collaborative endeavor between the Department, the Revenue Department, and the Excise Department intended to support the governments and the Ministry of Finance's National Electronic Payment System ("National e-Payment") policy.

Previously, the Department issued a tax refund to exporters and importers in the form of a paper coupon that they can use to pay their next import or export customs duty. Taxpayers must bring the paper coupon to the next tax payment at the customs office. However, with the advancement of technology, the DTC system gives an electronic coupon (the "e-Coupon") that importers or exporters can utilize at their convenience. The e-Coupons are available to importers and exporters through an internet portal.

The Department intends to issue a credit line for the e-Coupon's value, averaging 8,000 million baht per year. By this, the e-Coupon is valid for three years and can be renewed twice with each renewal lasting no more than three years. The Department has two electronic payment systems, which are as follows: (i) e-Payment by debiting the bank account and (ii) e-Payment through the bank's service channel/Bill Payment agent. As a result of the most recent implementation, DTC and e-Coupon, the Department's payment system will become 100 percent electronically.

Consequently, the Department intends to encourage practically all importers and exporters to pay their customs duties electronically, as less than 5 percent of the customs duties are paid in cash.

## **E-Service Tax Law**

### **VAT on non-resident electronic service providers and electronic platforms**

With the soon to become effective of the e-Service Tax Law or Amendment of the RC No. 53 B.E. 2564 (2021), on 1 September 2021, the non-resident electronic service providers and electronic platforms shall be aware of the tax registration within 30 days from the date of the income at an amount of 1.8 million baht has been reached in which the RD will start to offer the VAT registration service no later than the date of the effectiveness of e-Service Tax Law. To clarify, if the income of the company has exceeded 1.8 million baht before or on 3 August 2021, such a company shall register for VAT by 1 September 2021, or if it has been reached such an amount later than 3 August 2021, the company shall register for VAT within 30 days.

Examples of electronic services which are subjected to e-Service Tax law shall include the following:

- Digital products such as mobile applications
- Software programs
- Search engine services
- Streaming services
- Advertising services
- Digital music, films, and games

However, some electronic services are excluded from the definition of electronic services including:

- Telecommunication services
- Money transfer services
- Electronic vouchers
- Professional services involving human interaction such as consulting services

In addition, certain types of services that are not regarded as electronic services such as providing consulting service via e-mail or offering advertisement design via e-mail, the service recipient in Thailand still have to remit VAT to the RD. On the other hand, sales of newspaper, textbooks, and magazines in the electronic forms are exempted from VAT.

The platform operators shall also be liable for paying VAT on behalf of non-resident service providers, if electronic services provided from overseas by the service providers via a platform with continuous processes starting from offering service, receiving payment of service, and delivering service. In other words, the platform operators are required to register, charge, and remit VAT to the RD on behalf of all service providers.

The VAT \_e-submission can be done electronically through the Simplified VAT System for e-Service (“SVE”) provided on the website of the RD. The SVE allows the users to register for VAT, file VAT returns, pay VAT, and request for VAT refund.

After the completion, the SVE will notify the registrant and the list of VAT registrants on SVE will be announced on the website of the RD.

Failure to comply with the e-Service Tax law shall be subjected to penalties in the following:

#### Civil Penalty

- Conducting electronic businesses without VAT registration
- Failure to pay or remit tax within the tax deadline
- Filing incorrect tax return

#### Criminal Penalty

- Conducting electronic businesses without VAT registration
- Non-filing of tax returns
- Failure to submit reports as prescribed by the Director-General of the RD
- Intentionally evade or try to evade VAT

With new VAT rules enacted in Thailand, Bangkok Global Law are prepared to assist the affected electronic business operators and ensure compliance with this new VAT rules.

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

