



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

The Excise Department (“Department”) announced that the Department has completed the new structure of cigarette tax which is currently under review by the Finance Minister before proposing it to the Cabinet for consideration in November 2021.

The new structure of the excise tax levied on cigarettes would be based on 4 principles including public health, farmer’s income, preventing smuggling, and government revenue and it is expected that the new structure would result that the government would earn an average of 60 billion baht per year.

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

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 impacted by the growth in using tobacco leaf and cigarette tax evasion. Foreign cigarettes may be a substitutes for domestic cigarettes but have a much lower price than local cigarettes.

In addition, the current tax structure has severely affected the performance of the Tobacco Authority of Thailand which affects tobacco farmers who have been reduced their quota for buying tobacco by 50 percent for more than 3 years in a row.

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 is successfully operational, and the digital tax compensation (“DTC”) system was effective on 21 September 2021. The Department hopes that by implementing this system, the risk of Covid-19 transmission between the general public and customs officers will be reduced.

This is a collaborative endeavor between the Customs Department, the Revenue Department, and the Excise Department intended to support the government and the Ministry of Finance’s National Electronic Payment System (“National e-Payment”) policy.

According to customs law of Thailand, 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. They must bring the paper coupon to a customs office for the next customs payment. However, with the advancement of technology, the DTC system gives an electronic coupon (the “e-Coupon”) that traders 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. The e-Coupon is valid for three years and can be renewed twice, not exceeding three years from the date of issue, for a total time frame of approximately nine years. The Department previously had two electronic payment systems, which are as follows: 1. e-Payment by debiting the bank account and 2. e-Payment through the bank’s service channel/Bill Payment agent. As a result of the most recent implementation of the, DTC and the e-Coupon, the Department’s payment system will become 100 percent on electronic system.

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

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

On 23 August 2021, the Office of Securities and Exchange Commission of Thailand (“SEC”) announced that the SEC has planned to implement the new rules 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 No. Kor Thor. /2564 on Rules, Conditions and Procedures for Undertaking Digital Asset Business (No. ...) (“Draft”) provides additional rules concerning the retention of customer’s assets which are as follows:

1. The retention of customer’s money
  - **Current rules:** Money of the customers must be separated from money of a business operator and to be deposited with a commercial bank or other bank established by specific laws which must be clearly stated in the deposit account as actions are taken by business operators for the benefit of customers
  - **Additional rules:** imposing withdrawals or transfers of money in the account opened for the benefit of the customers to be in line with the principle of decentralization, multi-sign and checks and balances.
2. The retention of customer’s money and digital assets
  - Prohibiting the use of one customer’s asset for the benefit of another customer.
  - Requiring customer’s assets to be reviewed in relation to 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 method other 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 people.

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

1. Documentation 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 (the announced date in the Government Gazette).

New lists of E-instruments are introduced to require payment to be paid via the E-stamp Duty System

The E-Stamp duty system allows taxpayers to file Form Or.Sor.9 and pay stamp duty before or within 15 days from the date of execution of any of instruments.

Originally, there were five electronic instruments requiring a stamp duty to be paid via an electronic method which are as follows:

- Hire of work or service instruments;
- Loan instruments or bank overdraft instruments;
- Power of Attorney (POA);
- Proxy for voting at a company meeting; and
- Guarantee instruments

However, on 31 August 2021, the Revenue Department issued the Notification of the Director-General of the Revenue Department on Stamp Duty (No. 63) replacing the Notification (No.58) which introduced new lists of instruments that are executed in electronic format and stamp duty shall be paid via the E-Stamp Duty system. This notification shall apply to electronic instruments executed from the day following the date of its publication in the Government Gazette which is 1 September 2021.

The new lists of e-instruments are as follows:

- Rental of land, building, other structures or floating house instruments;
- Instruments of transfer of share, debenture, bond and certificate of debt issued by any company, association, body of persons or organization;
- Hire-purchase of property instruments;
- Hire of work instruments;

- Loan instruments or bank overdraft instruments;
- Insurance policy;
- Power of attorney (POA);
- Proxy for voting at a company meeting;
- Bill of exchange or similar instrument used like bill of exchange for each bill or instrument, and promissory note or similar instrument used like promissory note
- Bill of lading;
- Share or debenture certificate, or certificate of debt issued by any company, association, body of persons or organization, and bond of any government sold in Thailand;
- Cheque or any written order used in lieu of cheque ;
- Letter of credit;
- Traveler's cheque;
- Goods' receipt;
- Guarantee instruments;
- Pawnbroking instruments;
- Warehouse receipt;
- Delivery order;
- Agent instruments;
- Partnership contract; and
- Receipt issued in connection with a sale, sale with right of redemption, hire-purchase or transfer of ownership in a vehicle, only if the vehicle is registered under the law governing such vehicle.

### **The new policy bans on importation of used motorcycles into the Kingdom of Thailand**

On 12 August 2021, the Government Gazette published Notification of the Ministry of Commerce on Prohibited Imports of Used Motorcycles into the Kingdom B.E. 2021 ("Notification"). The Notification prohibited imports of used motorcycles into the Kingdom of Thailand which shall come into force after 180 (one hundred and eighty) days from the date of its publication on the Government Gazette in order to allow industries and government agencies for preparing for its implementation.

The Notification provides the definition of motorcycles which means a motorcycle, electric motorcycles, mopeds, bicycles equipped with motor assistance

including side trailers under the customs tariff of type 87.11 and motorcycles which are considered as antique over one hundred years according to the Customs Tariff Type 97.06. This does not include side trailers that are not installed on the vehicle.

In addition, the meaning of used motorcycles which is also provided includes to used motorcycles, but excludes the following:

1. Motorcycles that have been used specifically for the purpose of quality testing or for delivery to a dealer with a certificate from a brand owner; and
2. Motorcycles registered for the first time abroad before loading into vehicles from the country of origin for not more than sixty days by paying customs duties to the Customs Department of the Ministry of Finance as required for new motorcycles.

However, under the Notification, there are some exceptions to import used motorcycles into the Kingdom which are as follows:

1. Used motorcycles that the Ministry of Foreign Affairs deems appropriate to be imported for embassies, consulates general, international organizations, trade and economic offices of foreign countries, and foreign organizations which have been granted an immunity to be imported into the Kingdom along with a letter notifying the Customs Department;
2. Used motorcycles that the Ministry of Foreign Affairs deems appropriate to be imported for government agencies, state enterprises or charitable organizations of Thailand receiving such donations from foreign countries imported into the Kingdom under the National Disaster Prevention and Mitigation Plan along with a letter notifying the Customs Department;
3. Used motorcycles that are temporarily imported into the Kingdom and will be re-exported or temporarily taken out of the Kingdom and re-imported into the Kingdom under the law on customs tariffs. The importer must formalize with the Customs Department that the motorcycles will be reexported or will be reimported;
4. Used motorcycles registered for domestic use with the Department of Land Transport and then exported out of the Kingdom but unable to register for use abroad or unable to import into that country causing the need to be repatriated to Thailand. In

this regard, it must be reimported within two years from the date of exportation out of the Kingdom;

5. Used motorcycles imported into the Kingdom for use as prototype motorcycles for research, development or performance testing with an approval document for exemption from excise tax or is entitled to tax at the zero rate from the Excise Department in order to show to the Customs Department for importing;
6. Used motorcycles that the Fine Arts Department has issued a certificate of importation into the Kingdom for only displaying in the museum and shall not be registered with the Department of Land Transport; and
7. Used motorcycles considered by the Ministry of Defense to be allowed to be imported into the Kingdom under the law on armament control.

Any used motorcycles imported in violation of provisions of this Notification shall be destroyed by the Customs Department.

#### **Plans to reduce import duties on alcohol beverages and cigars in order to attract foreigners to Thailand**

On 14 September 2021, Thai Cabinet passed its resolution to reduce the import duty rate in order to facilitate and reduce the cost of bringing in alcohol beverages and cigars by 50 percent for 5 years in accordance with the Government's plan on reviving the post COVID-19 economy.

In addition, the new structure of excise tax levied on cigarettes is expected to come into effect and the tax rate on cigarette will be levied at 40% regardless of the retail price of the cigarette.

In addition, the Customs Department is preparing to update the Notification regarding the customs formalities of personal belongings of passengers to be appropriate and up-to-date. This will revise the procedures for personal belongings for arrivals and departures by using the principle of considering the quantity or condition of imported or exported goods whether it is for personal use or not instead of considering the value of such goods.

#### **The SEC Urges Listed Companies on Digital Asset Investments**

On 17 September 2021, due to the digital asset trading considered a high-risk depending on factors, the Office of the Securities and Exchange Commission ("SEC") sent its circular to all listed companies by advising all listed companies that have invested or have plans to invest in digital assets to consider investing prudently and cautiously because their investment might significantly affect the financial position or operating results of their businesses.

In this regard, the SEC has reiterated that all listed companies should take action and consider various relevant factors such as the following:

- risk assessment;
- potential impacts;
- measures and risk management mechanisms ;
- readiness of work systems and personnel;
- study, analysis and selection of digital assets; and
- measures to monitor investments.

In addition, a listed company should consider its disclosing information on digital asset investments through the information system of the Stock Exchange of Thailand, a listed company website, and in the annual registration statement/annual report (Form 56-1 One Report) in order for investors to receive accurate and sufficiently significant information for their investment decisions.

Furthermore, the SEC suggests investing in digital assets through licensed digital asset business operators which are supervised by the SEC. This would ensure that such investments or executed transactions are protected by law as all digital asset operators in Thailand are required to obtain a license under the Royal Decree on Digital Asset Businesses B.E. 2561 (A.D. 2018).

The current lists of Digital Asset Exchanges are as follows:

- BITKUB
- Satang Pro
- ERX
- Zipmex
- Ubbit

- Z.comEX

The current lists of Digital Asset Brokers are as follows:

- Coins TH
- Bitazza
- KULAP
- Ubbit
- Z.ComEX
- Zipmex
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The current Digital Asset Dealer is Coins TH

### **What You Need to Know on Anti-Money Laundering**

Money laundering is the process for using money or assets obtained from an offense or acquired unlawfully and changing its condition into money or property that has been acquired lawfully. It involves three basic steps which are as follows:

- 1) Placement of illegal funds in a legitimate financial institution
- 2) Layering and mixing of illegal and legal funds to hide the origin of the illegal proceeds
- 3) Integration of funds back to the criminal

In addition, a predicate offense lies at the heart of the offense of money laundering because it is the main offense that are the cause, origin, source or basis of constituting or acquiring money or property illegally. For example, offenses relate to narcotics, human trafficking, public fraud, terrorism, and tax evasion.

Under Anti-money Laundering Act B.E. 2542 (1999), it requires some entities to report some activities that are related to an entry into a juristic act, a contract or execution of any act with others in any financial or commercial matter, or operation in connection with assets. A financial institution is one of the entities that is required by law to report transactions to the Anti-Money Laundering Office.

Transactions required to be reported by financial institutions are as follows:

- 1) Cash transactions with value equivalent to more than 2,000,000Baht;

- 2) Transactions that are electronic fund transfers or electronic payments involving cash worth 100,000 Baht or more;
- 3) Transactions that are money transfers or electronic payments involving the asset worth from 700,000 Baht or more;
- 4) Transactions involving the immovable asset and movable asset and the appraised price of which is worth of 5,000,000Baht or more;
- 5) Foreign exchange trading transaction from 500,000 Baht or more; and
- 6) A suspicious transaction which has no minimum limit.

A suspicious transaction is a transaction with a reasonable ground to believe that the transaction is connected or possibly connected with committing of a predicate offense. For example, a transaction with an unusually high monetary value compared to the customer's income or bank statement, or a transaction that intentionally splits the transaction in the multiple amount balances in order to avoid reaching the threshold to be reported.

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

