



Digital

Postponement of Digital Asset Taxation in Thailand

On 20 January 2022, the Office of the Securities and Exchange Commission (“SEC”) held the online meeting to talk with the Revenue Department (“RD”), Bank of Thailand (“BOT”), Thai Digital Asset Operators Trade Association and the Thai Digital Asset Association (TDAA), investors and people involved in the digital asset industry in relation to the guidelines on the digital asset taxation as such guidelines including tax calculation and collection has been scheduled to release by the end of January 2022 to be in compliance with the existing laws.

TDAA and Thai Fintech Association (TFA) expressed concern over the ineffectiveness and difficulty of the digital asset tax collection and calculation process which could be led to the unfair treatment of a certain group of people due to an uncountable digital asset transaction in Thailand. For instance, tracking and calculating tax from all cryptocurrency transactions will be very complex in practice for the RD.

Most operators also believe that it will be unfair for them to pay a full tax without allowing deduction for any loss. In this relation, the RD shall ensure that tax collection is fair for all taxpayers. Therefore, the postponement of the collection of digital asset tax for a few years providing every involved business a chance to be prepared for any collection of tax on digital assets in the future.

Digital assets for payment in Thailand are under discussion

The Bank of Thailand (“BOT”), the Securities and Exchange Commission (“SEC”), and the Ministry of Finance had jointly discussed and came to the conclusion that the usage of digital assets as one of a

means of payment for goods and services in Thailand shall be regulated since there is a potential risk that it may impact financial stability and economic system of Thailand.

However, according to Mr. Sethaput Suthiwartnarueput, the Governor of the BOT, the technologies and digital assets which do not provide such risks should be supported to motivate innovation and provide further benefit for the public.

The adaptation of digital assets as a means of payment in Thailand is widespread in business sectors and it seems to provide more risks than benefits to consumers and businesses through price volatility, cybertheft, data leakage, or money laundering, etc. Therefore, clear supervision of this activity is urgently needed. As a result, the regulators have conducted a public hearing on the supervision for using digital assets as a means of payment for goods and services in Thailand to determine the appropriate regulatory frameworks.

Therefore, it shall be closely monitored what the outcome for the adaptation of digital assets as a means of payment in Thailand will be after the supervision is officially effective.

Data Protection

Personal Data Protection Committee was officially appointed

After a few years since the Personal Data Protection was published in the Royal Gazette of which its full enforcement has been postponed for two years, the Cabinet finally approved the appointment of the Personal Data Protection Committee consisting of Mr. Tienchai Na Nakorn as the chairman and nine honorary directors on 18 January 2022 pursuant to the Notification of Office of the Prime Minister regarding the appointment of the Chairman and Honorary Directors of the Personal Data Protection Committee.

In reference to The Personal Data Protection Act B.E. 2562 (2019) (the “Act”), the Personal Data Protection Committee shall have several major duties and power

including: (i) making the master plan on the operation for the promotion and protection of personal data; (ii) determining measures or guidelines of the operation in relation to personal data protection in order to comply with the Act; (iii) issuing notifications or rules for the execution of the Act; (iv) announcing and establishing criteria for providing protection of personal data which is sent or transferred to a foreign country; (v) announcing and establishing guidelines for the protection of personal data as guidelines which shall be applied to the data controller and the data processor; (vi) providing advice or consultancy on any operation for the protection of Personal Data of the government agencies and private entities, in acting in compliance with provisions of the Act; and (vii) making rulings with respect to the issues arising from the enforcement of the Act.

Consequently, it could be expected that in the following months, we would see more specific regulations and guidelines related to compliance to the data protection law to be issued before the Act becomes fully enforced on 1 June 2022 provided that no postponement of enforcement of the Act will be announced.

Tax

Clear criteria for collecting crypto tax is expected to be issued

On 10 January 2022, the Revenue Department (“RD”) issued a statement via the RD website that the RD was urged to prepare clear criteria for calculating withholding tax on profits from the sale or investment of digital assets or cryptocurrencies to investors and the general public.

The Director-General of the RD revealed that the RD is currently hastened to proceed with the discussion with all concerned parties to consider clear criteria for calculating withholding tax on profits from sales or investments in digital assets or cryptocurrencies to be appropriate and expected to be issued.

In addition, the RD has discussed this matter with the Bank of Thailand, the Thai Digital Asset Association, the Office of the Securities and Exchange

Commission, and the Stock Exchanges regarding a public hearing to the related parties in order to establish criteria for tax collection by taking the best interests of the people and all parties as the main objective.

According to the Revenue Code (“RC”) and Emergency Decree Amending the RC (No. 19) B.E. 2561. All investors and mining operators who gained profits from cryptocurrencies are subject to a withholding tax at the rate of 15 percent through every transaction. In addition, the profits are subject not only withholding tax, but also corporate income tax by including for calculation of annual corporate income tax as such withholding is not regarded a final withholding tax. This is because profits from cryptocurrency trading are regarded as assessable income under Section 40 of the RC.

However, in practice, there is still a problem which requires clear guidelines for calculating corporate income tax. Therefore, it is necessary to keep an eye on how the RD will consider this issue.

VISA

Long-stay visa has been approved by the cabinet

On 18 January 2022, the Cabinet passed its resolution on measures aimed at attracting wealthy long-stay foreigners to Thailand. The purpose is to increase investment into the country and boost the country’s economy.

The new regulations are in the Draft Notification proposed by the Ministry of Interior and the Ministry of Labor.

Long-term resident visa of up to 10 years and work permits for those who has met qualifications will be granted to four groups of foreigners as follows:

1. Wealthy global citizens

There are no age restrictions for "wealthy global citizen" but they must 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.

2. Wealthy pensioners

Wealthy pensioner must be 50 ages or more, earn an income USD 40,000 each year, and invest USD 250,000 in government bonds or real estate.

3. Work-from-Thailand professionals

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.

4. High-skilled professionals

Experts in digital products shall therefore engage for SET-listed businesses for at least three years in any of private 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.

Foreigners still confront with many restrictions on retirement in Thailand

As Thailand has been ranked 11th out of 25th regarding best countries to retire in the world of 2020, it is necessary for foreigners staying in Thailand to comply with Thai laws. On Bangkok Post of 24 January 2022 there is an interview between the Bangkok Post and the Immigration Bureau deputy commander Pol Maj Gen Achayon Kraithong regarding Thai laws and regulations on VISA, Work Permit, Permanent Residence, and Nationality granted to foreigners which can be divided into 4 main parts as below.

1. VISA

With regard to the Thai retirement visa, it is another term for “Extension of Stay Based on Retirement” which is an extension of a Non-Immigrant O Visa or Non-Immigrant O Visa. This is a long term Thai visa that entitles the holder to stay of uninterrupted 1 year period in Thailand. However, according to Section 37 (5) of Immigration Act B.E. 2522 (A. D. 1979), it requires a foreigner, who is permitted to stay in the

Kingdom temporarily, within a period of 90 days to report the stay of the foreigner to a competent official at the Immigration Division, of his or her residence, in writing, without delay, upon the completion of 90 day period. This shall be repeated at every 90 day interval. If there is an immigration office in the locality, the notification may be made to the competent official of that immigration office. In addition, this notification may be made by the alien in person or in writing to the competent official as regulated by the Director-General. For applying Non-Immigration O VISA, the applicant must be 50 years of age or over and must meet any of the financial requirements:

1. Security deposit of THB 800,000 in a Thai bank account for 2 months prior to the visa application
2. Monthly Income of 65,000 THB
3. Combination of security deposit and annual income with a total of 800,000 THB

2. Work Permit

According to the regulations of the Department of Employment, to legally work in Thailand, a foreigner must hold a Non-Immigration B VISA (Extension of Stay Based on Business) or Permanent Residence Certificate, and a work permit issued in his/her name. Therefore, a foreigner who holds a Thai retirement visa is not allowed to work in Thailand. In addition, foreigners are only allowed to perform work that does not violate the Alien Employment Act.

However, those who obtained Non-Immigration B VISA are also required to report to the competent official for every of 90 days.

3. Permanent Residence

Permanent Residence in Thailand is similar to Green Card system in other countries. An application for permanent residence opens from November to December of each year and there will be the notification from the Minister of Interior by approval of the cabinet regarding quota of foreigners to have residence in the Kingdom of Thailand in each year which is normally 100 persons per nationality.

In addition, a foreigner who holds a permanent resident certificate can stay in Thailand indefinitely and do not have to notify or report to the competent official every of 90 days.

4. Nationality

It is important to note that even a foreigner who has lived, worked, paid taxes for over a decade, the foreigner is regarded as a non-immigrant which cannot claim for any state welfare benefits unless the foreigner is undergoing a process to change the nationality.

Security

Security standard requirements regarding cyber security are expected to be enacted by the end of 2022

As Personal Data Protection Act B.E. 2562 will be officially enforced in June 2022, data or personal information of both private and public organizations would be targeted by hackers. To protect this arising issue under Cybersecurity Act B.E. 2562 (A.D. 2019) (:Act”), it is responsible for the “National Cyber Security Committee” (“NCSC”) to provide measures for preventing and mitigating risks from cyberthreats.

Under Section 3 of the Act, critical information infrastructure (“CII”) refers to the computer or computer system that a government agency or a company uses in its operation which relates to maintaining national security, public security, national economic security, or infrastructures in the public interest.

In this regard, the NCSC has implemented a plan to prevent cyberthreats by requiring approximately 100 organizations to be linked with the CII and will comply with the standard framework of security requirements which consists of 7 areas, namely national security, public services, banking and finance, information technology and telecoms, transport and logistics, energy and public utilities, and public health.

In addition, according to Section 44 of the Act, it requires the NCSA to prepare a code of practice and standard framework for maintaining cybersecurity of each organization in accordance with the policy and the plan on maintaining cybersecurity linked to the CII to

comply with provisions of the Act. The requirements include cyber incident response, cyber risk assessment, and auditing etc.

The NCSA announced that security standard requirements, including requirements for software and operating systems, for state agencies and CII-linked corporations, are expected to be enforced by the end of this year.

Investment

Thai Government approved 0% Capital Gain Tax for an Investment in Thai Startups

Capital Gain Tax can be defined as a tax on profits from sale of an investment that derives when an asset is disposed of. In Thailand, most types of capital gains are considered as taxable income. Income and capital gains are not separated and are under provisions of the Revenue Code. However, some exemptions have been granted by Thai governments including 0% Capital Gain Tax arising from a sale of an investment in Thai startups as proposed by the Digital Council of Thailand (“DCT”) which was approved by the cabinet in December 2021.

On 21 January 2022, the DCT revealed via its website that the Royal Decree on Capital Gain Tax Exemption for divesting from investment in Thai startups is expected to be issued in the first quarter of this year. Currently, it is still in the process of the Revenue Department to propose the draft of the Royal Decree to be approved by the cabinet in accordance with Thai law.

At the same time, the DCT has proposed to organize a roadshow in order to promote incentives to target investors and startups throughout the year including supporting target industries such as farmers, fisheries, as well as soft power in movies, sports and E-Sports, as well as establishing an assistance centre to assist and facilitate startup investment in various matters such as having a consultant to answer related questions, assisting in coordination with the government

authorities on related matters including providing necessary information and a manual or a guideline on incentives. The DCT is convinced that the capital gains tax waiver and the aforementioned promotions will create up to 5,000 new Thai startups in 2022.

This new taxation scheme is seen as one of the important strategies to uplift Thailand to be one of global economy hubs which will enable Thailand to promote its startups growth and generate country's revenue as a whole.

Drug

Thailand has legalized medical use of Cannabis, but prohibited its use for recreation purpose

On 24 January 2022, Thai Food and Drug Administration or Thai FDA announced that Cannabis and Hemp are medicinal plant that has a number of benefits and its substance can be used for in various health products, including food, medicine, cosmetics, herbs and others. In addition, a bill to legalize the household cultivation and consumption of cannabis in some locations has been proposed to Thailand's Narcotics Board for its consideration.

Thailand's Narcotics Board has approved the new bill and removed cannabis from its narcotic list. Under the new bill, it allows households to grow cannabis plant for their own consumption after notifying their local government authority. However, such consumption only be used for the medical purposes like traditional medicine. Those who grow cannabis without notifying their local government will be fined up to 20,000 baht. For commercial purpose, those who would like to engage in commercial cultivation, import, export, sales and advertisements of cannabis shall apply for and obtain a license from Thai FDA. Those who sell cannabis without Thai FDA's approval will be subject to a fine of up to 300,000 baht or 3 years imprisonment, or both.

With regard to the recreational use of cannabis, such use is prohibited except for some areas that require prior permission and cannabis cannot be used for persons under 20 years of age, pregnant women, lactating women and any other person as specified by the Minister of Public Health.

A public hearing on the new bill will be held and this new bill must be proposed to the Parliament for its deliberation.

Should you have any question, please do not hesitate to contact us via info@bglballaw.com

