



FATCA AGREEMENT

The Revenue Department Begins Financial Account Information Exchange under the FATCA Agreement with the United States

On 27 June 2024, a press conference was held that Thai Revenue Department initiates Financial Account Information Exchange under the Foreign Account Tax Compliance Act (FATCA Agreement) with the United States. As Thailand signed an agreement between the Government of the Kingdom of Thailand and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA for cooperation in improving international tax compliance. The agreement facilitates the automatic exchange of financial account information. The purpose of this agreement is to prevent international tax evasion, enhance tax transparency, and improve the efficiency of government tax administration.

The Revenue Department of Thailand announces that the Director-General of the Revenue Department of Thailand, as the authorized competent authority, has signed the Competent Authority Arrangement (CAA) with the United States. This arrangement supports the implementation of the FATCA agreement. Consequently, Thailand is able to exchange information under the FATCA agreement. Reporting entities can submit financial account information under FATCA through the International Data Exchange Service (IDES).

However, the Revenue Department informed, that due to the improvement on technical difficulties on IDES system of the United States, which requires system testing for data

submission in July 2024, the Revenue Department will grant a relaxation of fines or penalties for reporting under the FATCA agreement during 2024. The person who has duty to report can submit a report through the IDES system by 30 September 2024.

INSURANCE

Co-Payment Option

The Office of the Insurance Commission (“OIC”) recently unveiled the future option for health insurance. The key insight was the potential for insurance companies to apply a co-payment model for their policies in the future.

Co-payment refers to the insured individual's contribution toward medical expenses, where the responsibility is shared. This payment is specified in advance, either as a fixed amount or a percentage of the bill for covered services. This approach will benefit the insurance industry over time, as it aims to minimize excessive claims for minor ailments and avoidable hospital stays.

The elderly and those with a history of serious illness also face difficulties accessing health insurance given the high premiums. As the health insurance industry has experienced significant growth over time, the OIC has observed a concurrent rise in the number of claims and the loss ratio. This trend presents a challenge for insurance companies to develop policies that will better address the needs of Thailand's aging society in the future.

Insurance companies have introduced a co-pay system to help lower premiums, with policyholders typically required to pay this amount at the time of service. This adjustment is

designed to make health insurance more accessible to those who truly need it by reducing premiums and enhancing affordability, especially in an aging society. In the long term, this change is anticipated to benefit the industry, as lower premiums are projected to gradually increase insurance penetration rates.

Digital Token Investment

The Securities and Exchange Commission (“SEC”) sees the new opportunity for small businesses and soft power enterprises to raise capital through digital tokens as there are at least 19 companies, mainly real estate and software businesses, interested in utilizing investment tokens for fund raising; three companies have successfully raised funds via digital tokens, for a total project value of 4.8 billion baht.

To facilitate and enhance confidence in fundraising and investing in Initial Coin Offering (ICO) without harming the adoption of technology in business and industry, the SEC has amended the criteria regarding utility tokens and enhanced the governance mechanism for both primary and secondary markets.

Mainly, non-financial ready-to-use token which is merely issued for consumption purposes or for certifying any rights (Group 1 utility token) and other utility token which is not intended to be listed for trading is exempted from liability to obtain approval for the offering. Meanwhile, the ready-to-use utility token other than group 1 (Group 2 utility token), which intends to be listed for trading on digital asset exchanges, must obtain approval for the offering from the SEC and disclose information as required. However, the utility token must not be used for staking purposes nor be used as a means of payment (MOP) as defined by the Bank of Thailand.

Additionally, the SEC has launched a digital asset sandbox, enabling businesses to test

innovative services under regulatory supervision, fostering a safer, more transparent environment for digital fundraising.

The SEC also updated its guidelines and criteria for digital asset exchanges to align with international standards. The amendments are effective on 13 August 2024, reflecting the SEC’s approach in creating a strong foundation for digital fundraising and trading in Thailand.

Digital Assets Business Regulatory Frameworks and Exchange Rules

The Securities and Exchange Commission (“SEC”) of Thailand has amended its regulations on digital asset operators and exchanges with a view to enhance business efficiency and protect investor. The amendment mainly involves stricter governance criteria and exchanges rules to align with international standards. The changes are in the SEC Notification No. GorThor. 23/2567, Notification No. GorLorThor. 24/2567, and Notification No. NorPor. 5/2567 on 16 August 2024.

Key Governance Updates

Key governance updates include the board governance requirement for digital asset operators with at least 10,000 customers or holding at least THB 500 million customer assets for 15 consecutive days must consist of at least 5 board of directors with at least 2 independent directors. The audit committee must also be established, with at least half of them being independent directors, to provide a check & balance mechanism to ensure the compliance of the business operator. The board governance must be established within 180 days after the digital asset operator meets the required condition.

The qualifications have been increased, the authorized directors and managers must either have at least 1 year’s relevant experience in

digital assets or complete an SEC-approved training course.

The new governance requirements emphasize the internal control and operational structure of the business operator, including customer service system requirements to be more standardized and robust.

Exchange Rules

The updated regulations also impose minimum standards and guidelines for digital asset exchanges on the proposal of rules (“exchange rules”), which must secure SEC approval.

The exchange rules on listing and delisting must have clear and fair conditions, procedures, and timelines that comply with relevant regulations, with a primary focus on the benefits and impacts on investors.

The exchange rules on trading must demonstrate the efficient transactions, in line with market mechanisms, transparent, appropriate, fair, and capable of handling the volume of digital asset trading that occurs.

The exchange rules on clearing & settlement must demonstrate the secure, safe, reliable clearing and settlement of digital assets without causing risks of default. The calculation method of the digital assets value must also be reasonable.

The exchange rules on market makers should include qualification, scope duty, ongoing performance oversight, and non-compliance measures for market makers.

Upcoming regulations

In addition, there are certain regulations currently in progress, expected to be effective within Q3-4/2024, including Group ICO filing (“Shelf Filing”) application, Regulations to encourage the establishment of digital asset custodians in Thailand to increase opportunities for a wider variety of custodial services, Licensing

provisions to support securities companies in selling investment tokens, and Capital requirements for digital asset business operators. Several regulations are expected to be implemented in Q2/2025, including Advertising and promotion guidelines, Know Your Customer (“KYC”) practices, and Reporting requirements for digital asset business operators.

PDPC

The Personal Data Protection Committee Issues the Notification on the Deletion, Destruction, or Anonymization of Personal Data

On 31 July 2024, the Personal Data Protection Committee (“PDPC”) issued the Notification to clarify the responsibilities of Data Controllers. The Data Subjects have the right to request that the Data Controller delete or destroy their personal data, including copies that it can no longer identify the Data Subject. The Data Controller shall comply with the request of the Data Subject request within 90 days.

If the immediate deletion or destruction of personal data is not feasible due to any technical reason. For example, when electronic personal data is temporarily stored pending overwriting or replacement by other data, the Data Controller is required to implement appropriate measures to make the data inaccessible, unusable, or undisclosable. Nevertheless, once the Data Controller or the Data Processor is capable of deleting, destroying, or anonymizing the Personal Data such that it no longer identifies the individual, the Data Controller or the Data Processor shall execute this action without undue delay.

When anonymizing personal data or making it unidentifiable to the Data Subject, the Data Controller is required to remove or erase all direct identifiers, including first names, middle

names, last names, national ID numbers, passport numbers, and any other identifiable information.

Subsequently, further measures shall be taken to ensure that the data cannot be indirectly linked to the Data Subject, thereby preventing re-identification. This may involve the process of pseudonymization to reduce the risk of the data being traced back to the individual.

TAXATION

A closer inspection of negative income tax

Negative income tax (NIT) has been long considered to be applicable in Thailand.

The NIT aims to reform the Thai tax structure by providing financial support to individuals with low or no income, while encouraging them to enter the tax system.

The NIT concept is not new in Thailand as it was proposed by the Finance Ministry's Fiscal Policy Office (FPO) about 10 years ago and was included in the 12th National Economic and Social Development Plan from 2017 to 2021, as well as the National Reform Plan. However, it remained dormant in that plan.

the NIT is dubbed as "Start-Up Money Transfer Policy".

The NIT is a concept aimed at addressing poverty and social inequality through a liberal approach that encourages people to work. If someone's income is below a certain threshold, the government allocates a certain amount of tax money to him or her. The NIT concept has been called workfare, where an individual must work and be part of the tax system. For people whose income do not meet the minimum threshold, they receive financial support from the government. This differs from welfare, where individuals may receive benefits from the government without

having to work, such as with the current state welfare card. The NIT positively introduced people into the tax system by filing their income for verification. The government may not currently receive tax revenue from this group of people, but in the future, as their income grows beyond the threshold for government support and they earn enough to pay personal income tax, the Revenue Department will have their income data which is very impressive if the expectation is met.

For example, if Mr A has no income, he would receive, say Baht 5,000 in compensation from the government.

Mr B has income of, say Baht 20,000 as the minimum threshold, so he would receive no compensation.

According to the Revenue Code, any individual earning 60,000 baht or more per year are required to file tax forms, even if such individual has no tax liability. In practice, many people do not file taxes despite meeting the legal income threshold.

If the NIT system were to be implemented in Thailand, the tax filing requirements under Section 56 of the Revenue Code requires amendment. The amendment should state that anyone earning even one baht must file a tax form, ensuring that everyone enters the tax system, while granting the Revenue Department the legal authority to verify individuals' income.

The problems that hold Thailand from this kind of development is the education support to explain the NIT system to the public and gaining acceptance. As this system is linked to the tax system, people may fear being taxed, making it politically difficult to promote.

This includes reviewing various exemptions and deduction measures, as well as minimising unnecessary cost-of-living support measures, such as energy subsidies, to ensure they are essential and beneficial to the economy and society.

Tax cut could accompany hub policy

The Ministry of Finance contemplated reducing personal income tax and corporate income tax rates as the financial hub incentives to attract foreign investment.

It was mentioned that the policies for an entertainment complex, aviation hub, and financial hub are three core strategies to entice foreign investment. The financial hub was approved by the cabinet and the committee was considering the details.

Not only tax incentives measure, but the incentives also include non-tax measures, such as easing entry into the country and labour benefits. It was also mentioned that the attractive tax rate will be beneficial for the country as most financial hubs, such as Singapore, offering lower tax rates than Thailand. This could help provide targeted and swift economic stimulus to the public.

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

