



## Tax & Legal Newsletter

### April 2022

#### Rules provided for individuals to offset certain capital gains and losses from digital assets

A ministerial regulation (No. 380) issued on 14 March 2022 and a notification from the Director-General of the Thai Revenue Department on Income Tax (No. 424) issued on 24 March 2022 provide for a personal income tax exemption for certain capital gains derived from the transfer of cryptocurrency or digital tokens, in an amount equal to the capital losses incurred from the transfer of such assets during the same tax year (i.e., the capital losses from such transactions may offset the capital gains from such transactions during the same tax year). The exemption, which aims to encourage trading in digital assets, is available retroactively with respect to transactions carried out on or after 14 May 2018 via a digital asset exchange licensed under Thai law (14 May 2018 is the effective date of a government decree on the tax treatment of cryptocurrency and digital tokens). The ministerial regulation and notification amend a previous ministerial regulation (No. 126 (B.E. 2509 (1966))) to provide a personal income tax exemption for qualifying income if the rules and conditions set forth in the notification are fulfilled, which are summarized below:

- The calculation of capital gains and losses from the transfer of cryptocurrency or digital tokens must be carried out in accordance with generally accepted accounting methods, and once adopted for a tax year, the same method must be applied throughout the relevant tax year. The value of cryptocurrency and digital tokens held at the year end, as determined based on the accounting method selected, will constitute the carrying value of such cryptocurrency and digital tokens to be carried forward to the subsequent tax year.
- Individuals that derive income from the transfer of cryptocurrency or digital tokens must prepare books of account containing detailed records of capital gains and losses resulting from the transfer of cryptocurrency or digital tokens. Individuals must maintain such books of account together with other supporting documents for the transactions, and these records must be

readily available for inspection by Revenue Department officers. The records must contain, at minimum, the details prescribed under the notification.

#### **Rules, criteria, and conditions provided for claiming additional corporate income tax deduction with respect to investments in automation systems**

A notification from the Director-General of the Thai Revenue Department on Income Tax (No. 421) issued on 21 March 2022 sets forth the rules, criteria, and conditions for claiming the additional corporate income tax deduction for companies or juristic partnerships that is allowed by a royal decree (No. 738) issued on 30 November 2021, with respect to investment expenditure incurred to purchase machinery and computer software in connection with a qualifying automation investment project that has been certified by the Center of Robotics Excellence (CoRE). The additional tax deduction of 100% (i.e., a total deduction of 200%) is available for the amount actually paid pursuant to an agreement, purchase order, contracted work order, or similar agreement entered into between 1 January 2021 and 31 December 2022.

The additional tax deduction must be allocated equally over five consecutive annual accounting periods, beginning with the accounting period in which the depreciation for wear and tear of the investment assets commences (as provided under section 65 bis (2) of the Thai Revenue Code).

A company or juristic partnership wishing to claim the additional tax deduction must submit details on the investment project, along with a payment plan, to the Director-General of the Thai Revenue Department electronically through the Revenue Department's online portal by 31 May 2023. The company or juristic partnership also must prepare a report providing details on the investment in the automation system, which must contain, at a minimum, the particulars and statements required based on the template attached to the notification. The report must be maintained at the company or juristic partnership's place of business and must be available for inspection by Revenue Department officers.

#### **Rules, criteria, and conditions provided for claiming additional corporate income tax deduction with respect to expenses incurred for employment of certain highly skilled personnel**

A notification from the Director-General of the Thai Revenue Department on Income Tax (No. 422) issued on 21 March 2022 sets forth the rules, criteria, and conditions for claiming the additional corporate income tax deduction for companies or juristic partnerships operating in targeted industries that is allowed by a royal decree (No. 739) issued on 30 November 2021, with respect to expenses incurred for the employment of certain highly skilled personnel in the fields of science, technology, engineering, and mathematics (STEM) that are certified by the Ministry of Higher Education, Science, Research and Innovation. The additional tax deduction of 50% (i.e., a total deduction of 150%) is available for employee salaries actually paid from 1 January 2021 to 31 December 2022, but the employee's salary on which the additional deduction is based may not exceed a maximum salary of THB 100,000 per month.

A company or juristic partnership wishing to claim the additional tax deduction must prepare a report showing details regarding the employment of highly skilled personnel in accordance with the form attached to the notification, and must submit the report to the tax assessment officer along with the annual corporate income tax return (PND.50) for the relevant accounting period.

#### **Rules, criteria, and conditions provided for claiming additional corporate income tax deduction with respect to certain employee training expenses**

A notification from the Director-General of the Thai Revenue Department on Income Tax (No. 423) issued on 21 March 2022 sets forth the rules, criteria, and conditions for claiming the additional corporate income tax deduction for companies or juristic partnerships that is allowed by a royal decree (No. 740) issued on 30 November 2021, with respect to expenses incurred for sending employees to attend a course of study or training or for arranging a training program for employees. For expenses to be eligible for the additional tax

deduction, the curriculum of the training must be approved by the Ministry of Higher Education, Science, Research and Innovation; the Eastern Economic Corridor Policy Office; or the Digital Economy Promotion Agency. The objective of the additional tax deduction is to promote the improvement of the knowledge and skills of Thai employees in the fields of science, technology, engineering, and mathematics. The additional tax deduction of 150% (i.e., a total deduction of 250%) is available for amounts actually paid from 1 January 2021 to 31 December 2022. A company or juristic partnership that claims the additional tax deduction provided under Royal Decree No. 740 must not claim, either partially or wholly, any other tax deductions for the same expenses under other royal decrees issued under the Thai Revenue Code.

### **Rules, criteria, and conditions provided for claiming certain tax exemptions in relation to debt restructuring**

A notification from the Director-General of the Thai Revenue Department (No. 41) issued on 17 March 2022 sets forth the rules, criteria, and conditions for claiming exemptions from personal income tax, corporate income tax, specific business tax, and stamp duty that are allowed by a royal decree (No. 742) issued on 23 February 2022, with respect to certain income derived by a debtor from a restructuring of debt carried out in accordance with rules set forth by the Bank of Thailand on debt restructuring for financial institutions. The exemptions covered in the notification relate to situations in which the debtor derives income from the transfer of immovable property that the debtor mortgaged as security for a loan, provided that the immovable property is transferred to an entity other than the creditor whose claims are secured by the mortgage. The amount that is exempt may not exceed the debt payable to the creditor or the obligation under the security agreement with the creditor.

The notification defines the term “creditor” as including both financial institutions and certain types of non-financial institution corporate creditors.

To benefit from the tax exemptions, the creditor, the debtor, and the transferee of immovable property must jointly prepare a certificate confirming the transfer of immovable property. The certificate must contain, at a minimum, the particulars and statements required based on the template attached to the notification, and the certificate must be submitted to the land registration officer and the Director-General of the Thai Revenue Department.

Based on Royal Decree No. 742, the tax exemptions generally are available in relation to property transfers and the execution of instruments carried out between 1 January 2022 and 31 December 2026 (except for transactions in connection with the restructuring of debt carried out by certain types of corporate creditors, such as creditors that carry on hire-purchase and leasing businesses, for which the exemptions are available retroactively for transactions carried out from 1 January 2021 to 31 December 2026), provided the relevant conditions are fulfilled.

### **Filing deadline extended for annual transfer pricing disclosure form**

A notification from the Thai Ministry of Finance (No. 2) issued on 25 March 2022 provides an extension of the filing deadline for the annual transfer pricing disclosure form that entities with annual revenue of THB 200 million or more are required to submit to report the value of transactions carried out with related companies or juristic partnerships, as defined under section 71 bis of the Thai Revenue Code. Normally, the disclosure form must be submitted within 150 days from the last day of the relevant accounting period. However, for submissions with respect to reporting periods commencing on or after 1 January 2020 up to 31 December 2020, the notification extends the submission deadline until 30 May 2022.

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