



Tax & Legal Newsletter

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Updated guidance on advance pricing arrangements

The Thai Revenue Department (TRD) issued updated guidance in October 2023 on advance pricing arrangements (APAs), which provides instructions and requirements for bilateral APAs. The major update to the guidance is regarding the information required to be included in the APA application. The new information requirements are largely consistent with the transfer pricing documentation requirements under a 2021 notification from the Director-General of the TRD on income tax (No. 407). APA applicants should ensure that all information and documents prescribed in the updated guidance are available to facilitate the negotiation process. Otherwise, there could be a risk that the TRD may not accept the APA request.

It is worth noting that a letter of intent to request a bilateral APA must be submitted to the Director-General of the TRD at least six months before the last day of the first accounting period that the applicant wishes to be covered by the APA. The new information requirements specified in the updated guidance will also affect the information required for the pre-filing meeting with the TRD, which must be submitted to the TRD at least 15 days prior to the scheduled meeting. After the pre-filing meeting, the applicant must submit three copies of the APA application in the Thai and English languages, together with an electronic copy of the application, to the TRD before the last day of the first accounting period covered by the request.

Rules, criteria, and conditions set forth for tax agents representing taxpayers

A notification from the Thai Revenue Department (TRD) dated 13 September 2023, which is effective as from 14 September 2023, sets forth a definition and characteristics of a qualified tax agent. It also sets forth the rules, criteria, and conditions pertaining to application requests, the issuance of licenses, the renewal of licenses, and substitute license application requests for persons wishing to be a tax agent authorized to remit taxes, file online tax returns, and perform any other duties (as prescribed by the Director-General of the TRD) via the TRD's website. The salient features of the notification are as follows:

- A tax agent is a person permitted by the Director-General of the TRD to represent taxpayers in filing online withholding and income tax returns (other than personal income tax return form PND. 91) and performing any other duties (as prescribed by the Director-General) via the TRD's website.
- The person wishing to be a tax agent must possess the required qualifications and follow the rules, criteria, and conditions set forth in the notification, including the following:
 - Individuals are required to meet the definition of a "bookkeeper" under the Accounting Act of B.E. 2543 (2000), and to pass the training courses prescribed by the Director-General of the TRD.
 - Companies or juristic partnerships incorporated under the laws of Thailand must have a director or partner (as the case may be) that meets the definition of a "bookkeeper" under the Accounting Act of B.E. 2543 (2000) and that passes the training courses prescribed by the Director-General of the TRD.
 - The bookkeeper must have at least five years of experience in accounting with at least 30 taxpayers as clients as at the date the tax agent application request is filed, and must not act as an auditor for the taxpayer for which the bookkeeper wishes to serve as a tax agent.

To apply, eligible individuals or juristic persons may submit their requests along with the required documents to the Director-General of the TRD via the TRD's website, in accordance with procedures specified by the TRD.

Rules, criteria, and conditions provided for corporate income tax and VAT exemptions relating to transfers of digital investment tokens

A notification from the Director-General of the Thai Revenue Department (No. 52) dated 26 October 2023 sets forth the rules, criteria, and conditions for corporate income tax and VAT exemptions for companies or juristic partnerships for income and amounts included in the tax base arising from a transfer of digital investment tokens offered to the public under the law regarding digital asset businesses ("digital tokens for investment") on or after 14 May 2018, pursuant to a royal decree (No. 779) dated 13 August 2023 that aims to promote investment in digital tokens. The salient features of the notification are as follows:

- Companies or juristic partnerships must not change the accounting classification or accounting principles that have been adopted with respect to the digital tokens for investment offered.
- If companies or juristic partnerships classify the income from digital tokens for investment as income from a capital-like investment, upon redemption of the digital tokens or distribution of profit sharing or other benefits to the holders of the digital tokens, the companies or juristic partnerships must not treat the amounts paid as expenses in their corporate income tax computation.
- If companies or juristic partnerships classify the income from digital tokens for investment as income from liabilities, upon redemption of the digital tokens from the holders of the digital tokens, the amounts paid must not be treated as expenses in the corporate income tax computation.
- If companies or juristic partnerships (i) fail to utilize the income from the offering of digital tokens for investment for the operations indicated in the offering registration or the prospectus, or (ii) have their permission to offer digital tokens for investment revoked, the income from the offering of such digital tokens (after deducting the amount already paid back to token

holders) must be included as income in the computation of net profits for corporate income tax purposes. The inclusion must be made for the accounting period following the accounting period in which the circumstances described in (i) or (ii) above arise.

- Companies or juristic partnerships must maintain the approval documents relating to the digital tokens for investment offering that were issued by Thailand's Securities and Exchange Commission, the offering registration, and any other documents relating to the offering of the digital tokens, as well as information pertaining to the digital tokens that is required for public release, to be available for review by the tax authorities.

Where companies or juristic partnerships fail to satisfy the rules, criteria, and conditions mentioned above, the exemptions from corporate income tax and VAT will cease to apply retroactively as from the date the companies or juristic partnerships initially utilized the tax exemptions.

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