GMS Flash Alert


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# Thailand – New Law on Taxation of Digital Assets

On May 10, 2018, Thailand's Emergency Decree on Digital Assets Business 2561 ("Decree on Digital Assets") was issued, aiming to control Digital Assets Businesses which include the following:

- Digital assets trading/exchange centers;
- Digital assets brokerages;
- Digital assets traders; and
- Other businesses related to digital assets as the Minister of Finance prescribes based on the Thailand Security Exchange Commission's ("SEC") recommendations.

At the same time, Emergency Decree No. 19 amending the Thai Revenue Code ("Decree on Taxation") was issued to include income and gains derived from, or on disposal of, digital assets in assessable income, as well as to add a withholding tax requirement.[1]

## WHY THIS MATTERS

For taxpayers investing or trading in digital assets like Bitcoin and other cryptocurrencies, these recent decrees offer some much-needed clarification, defining their trading/investing activities for purposes of Thailand's tax law and clarifying what their tax liability will be.

However, for nonresident taxpayers applying treaty provisions, it is currently unclear how the Revenue Department will apply tax treaties to their income and gains derived from digital assets.

Taxpayers and their professional tax advisers should familiarize themselves with the new policies and take steps to foster their compliance.

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# Meaning of Digital Assets

The Decree on Taxation does not provide the definition of a "digital asset"; however, the term is defined in the Decree on Digital Assets to mean "cryptocurrency" and "digital tokens."

"Cryptocurrency" means an electronic data unit which is created on a system or electronically with the purpose of being used as a medium of exchange for goods, services, or other rights, or exchange between digital assets, and shall include the other electronic data units as prescribed by the SEC's Notification (to come).

"Digital token" means an electronic data unit which is created on a system or electronically with the purpose to determine the right of a person to participate in an investment, project, or business; or to determine the right to acquire goods, services, or other specific rights under an agreement between the issuer and the holder, and shall include other rights pertaining to the units as prescribed by the SEC's Notification.

# Assessable Income

The Thai Revenue Code classifies assessable income into eight categories under sections 40(1) to 40(8). The Decree on Taxation adds two sub-categories of income under section 40(4):

- The share of profits or other similar benefits derived from holding or the processing of digital tokens (section 40(4)(h)), and

- Benefit derived from transfer of cryptocurrency and digital tokens which exceeds the cost of the investment (section 40(4)(i)).

### Withholding Tax

Section 50 of the Revenue Code specifies withholding tax obligations in respect of payment of income to an individual. The Decree on Taxation adds the withholding tax requirement on assessable income derived from digital assets that fall under sections 40(4)(h) and 40(4)(i) discussed above. The withholding tax rate is 15 percent.

In the context of an individual, a 15-percent withholding tax will be imposed on the two new sub-categories of income for both resident and nonresident individuals. A Thai resident will be subject to withholding tax under new section 50(2)(f), whereas a nonresident individual will be subject to withholding tax under existing section 50(2)(a). This section imposes a 15-percent withholding tax on income derived by nonresident individuals under section 40(4), which will now include these two new sub-categories of assessable income.

## KPMG NOTE

Individual taxpayers will also be required to include such income as assessable income upon filing their annual personal income tax ("PIT") returns. The 15-percent withholding tax should be creditable against their final tax liability. Without the option to exclude such income from the annual PIT return (which, for example is available for dividend income received by a Thai tax resident), this could result in the individual taxpayer paying more than 15-percent tax on income from digital assets where his/her marginal tax rate exceeds 15 percent.

For nonresident taxpayers, it is important to consider the application of tax treaties as relief from the Thai withholding tax may be available. It is currently unclear how the Revenue Department will apply tax treaties to income and gains derived from digital assets. Ultimately, the outcome will depend on the specific facts and circumstances, which should be carefully analyzed by taxpayers.

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## FOOTNOTE:

1 To view the new decree (in Thai), click here.

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### Updated Booklets to Help Assignees Understand Their U.S. Tax Obligations!

The updated booklets ***U.S. Taxation of Americans Abroad*** and ***U.S. Taxation of Foreign Citizens*** are now available in .pdf format for global mobility professionals and international assignees. Please note that these annually-published GMS publications for the United States have been updated to account for changes to U.S. tax law – including the Tax Cuts and Jobs Act (P.L. 115-97) – and are **current as of March 31, 2018**.

Click on ***U.S. Taxation of Americans Abroad*** and ***U.S. Taxation of Foreign Citizens*** to access these informative and helpful publications.

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**Contact us**

For additional information or assistance, please contact your local GMS or People Services professional or one of the following professionals with the KPMG International member firm in Thailand:

**Lynn Tastan**
**Partner**
Tel. + 66 (0) 2 677 2477
**ltastan@kpmg.com**

**Panisa Srihera**
**Associate Director**
Tel. + 66 (0) 2 677 2544
**panisa@kpmg.com**

**Tanakorn Jennanachok**
**Assistant Manager**
Tel. + 66 (0) 2 677 2517
**tanakorn@kpmg.com**

**The information contained in this newsletter was submitted by the KPMG International member firm in Thailand.**

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