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Digital Assets in Thailand: Regulating the Blockchain Asset Market



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Digital Asset Businesses in Thailand should get up to speed on the cryptocurrency framework as they will be subject to the newly imposed taxation.

In May 2018, the Kingdom of Thailand set out a regulatory framework on cryptocurrencies via enactment of two Emergency Decrees: the Emergency Decree on the Digital Asset Businesses B.E. 2561 (2018) (the “EDDAB”) and the Emergency Decree on the Amendment to the Revenue Code B.E. 2561 (2018). These two decrees set out a mandate and framework for the establishment of rules on the issuance, trade and taxation of digital assets in Thailand. While the EDDAB has been formally issued, this decree merely sets out the broad scope of the Thai cryptocurrency framework and directs the issuance of subordinated regulations by the Ministry of Finance, the Securities and Exchange Commission (“SEC”) and the Thai Revenue Department (“TRD”) to effectuate the full regulatory scheme.

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A New Asset Class

Given the perceived unique nature of cryptocurrencies and the difficulties in applying current definitional nomenclature thereto, the EDDAB creates an entirely new class of asset denoted as “digital assets” and described as *electronic data units* created on an electronic system or network (distributed ledgers/blockchains). These digital assets are classified into two broad categories: “Cryptocurrencies” and “Digital Tokens.”

Cryptocurrencies

The first category of Digital Assets under the EDDAB are “cryptocurrencies” and covers electronic data

units built on an electronic system or network for the purpose of being a medium of exchange for the acquisition of goods, services, or other rights, or an exchange between Digital Assets, including other data units as specified by the SEC. This general terminology is meant to encompass “coins” as understood by the blockchain community. A “coin,” like Bitcoin for example, is a cryptocurrency which operates independently of any other platform. In layman’s terms, a coin has its own blockchain. A cryptocurrency can be referred to as “crypto coins” or “altcoin” (colloquial reference to a class of coins launched after Bitcoin).

Examples of popular cryptocurrencies include: Bitcoin, Ethereum, Bitcoin Cash, Ethereum Classic, Litecoin, Ripple and Stellar.

“Digital Tokens”

The second category of digital assets created under the EDDAB are “digital tokens” and are defined as an electronic data unit created on an electronic system or network for the purposes of (i) designating the rights of a person to participate in an investment in any project or business; or (ii) designating the rights to acquire specific goods, services or other rights under a token sale agreement between the issuer and the buyer, including other units specifying certain rights, as permitted by the SEC.

Digital Token for Investment

An “investment token” is defined as a form of an electronic data unit created for the purpose of designating the right of a person to participate in an investment in any project or business. Since the initial coin offering (“ICO”) boom starting in 2017, securities regulators have discovered that certain tokens have characteristics resembling securities—such as:

- (i) acquisition of rights in underlying assets; and
- (ii) rights to revenue or profit sharing without engaging in day-to-day operations.

Thus, certain securities regulators have sought to regulate these tokens as securities, subject to all the registration, approval and reporting requirements surrounding other investment securities.

Digital Token for Utilization

The second sub-category under the draft subordinate regulations to the EDDAB is the “utility token” and is defined as an electronic data unit which is created for the purpose of designating the right of a person to acquire goods, services, or any other similar rights under a specific agreement. In its simplest form, a utility token is a store of value intended to be used in exchange for a product or service.

Regulatory Landscape

Prior to issuance of the decrees, the portal for entry into the world of blockchain assets was through unregulated, though highly transparent, exchanges such as the BX and TDAX. Significant growth of investment in the sector has led to the regulation of both:

- (1) the offering/issuance of Digital Tokens to the public; and

- (2) the operation of Digital Asset Businesses (Exchanges, Brokers and Dealers) due to the striking similarities these assets have to securities and capital markets.

Initial Coin Offering

The ICO boom in 2017 resulted in a new mainstream form of crowdfunding. The offering of tokens and coins caught the eye of the SEC as the Issuance of Certain Digital Tokens were akin to the issuance of “securities” under the Securities and Exchanges Act. ICOs are now regulated through an “ICO Portal,” akin to financial advisers in traditional equity crowdfunding portals. ICO Portals must conduct analysis on the token to be offered to the public by verifying the whitepaper and registration statement. This analysis requires an understanding of blockchain technology.

In order to facilitate regulation by the SEC, businesses looking to conduct a token offering must be a business registered in Thailand and are required to file a registration statement and whitepaper to the SEC prior to making the actual offering. ICO Issuers must offer tokens through an approved ICO Portal to investors and are subject to certain limitations and qualifications such as disclosures, reporting, payments in Thai baht or cryptocurrencies.

Stakeholders

Exchanges

Exchanges are businesses that provide the service of trading/exchanging digital assets through either an order matching system or purchase/buyer matching system. Exchanges are permitted to provide custodian services with respect to digital assets. For the protection of traders on an exchange, exchanges are subject to strict data privacy and cybersecurity obligations. Exchanges are classified as financial institutions and accordingly subject to AML and KYC laws.

Brokers

Brokers are businesses that provide brokerage services relating to the trading and exchange of digital assets with others. Brokers are similarly classed as financial institutions and are also subject to a similar criterion imposed on exchanges with respect to trader protections and AML obligations.

Dealers

Dealers are businesses that provide trading and exchange of digital assets outside of a Digital Asset Exchange. Dealers are subject to similar obligations as exchanges and brokers; however they are not permitted to provide custodian services with respect to digital assets.

Tax Implications

Alongside the enactment of the EDDAB, the Thai government issued the Emergency Decree on the Amendment to the Revenue Code B.E. 2561 (2018). The amendments to the Thai Revenue Code (“TRC”) include:

- (i) the addition of two new sub-categories of income; and
- (ii) imposition of a 15 percent withholding tax (“WHT”) on income derived from digital assets.

Incomes Derived from Digital Assets

Under the amended TRC, taxes are imposed on the following “digital asset transactions”:

- profits or other economic benefits derived from holding digital assets; and
- gains realized from a sale or other disposition of digital assets.

Individual taxpayers are required to include such income as assessable income when filing their annual personal income tax (“PIT”) returns with a credit being granted for the 15 percent withheld.

VAT

The TRD categorizes digital assets as intangible assets and therefore subjects such trading to VAT.

Consequences for ICO Issuers

An ICO Issuer will be subject to both corporate income tax and VAT upon the ICO. Under the current regime, ICO issuers and those who purchase tokens (in Thai Baht or Cryptocurrencies) during an offering will trigger tax liabilities on both sides.

Non-Thai Tax Residents

Although the Emergency Decree does not expressly discuss the application of WHT on payments made to

a nonresident company, a 15 percent WHT should automatically be imposed by application of section 70 of the TRC requiring the payer of income to deduct 15% WHT on income under Section 40 (2)–(6) paid to a nonresident company that is not conducting business activities in Thailand.

Future Legal and Tax Developments

While the EDDAB sets out the framework for regulating these assets, there is a requirement that subordinate regulations be issued to effectuate the regulatory scheme. The subordinated regulations relating to the EDDAB are likely to be issued towards the end of June 2018 as the 90-day timeline for compliance by existing digital asset businesses under the EDDAB expires.

With respect to taxation it is expected that the TRD in the near future may:

- (i) impose WHT on corporate entities;
- (ii) provide an exemption on VAT imposed under the current regime on individuals who trade through authorized digital asset exchanges.

To facilitate the growth of Thailand’s Digital Economy and explore blockchain solutions for Thailand, the TRD may ease tax liabilities on ICO issuers and blockchain projects being undertaken in Thailand.

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