

VAT Development for Online Service and Digital Assets in Thailand

VAT & E-Books

Like many countries across the globe, Thailand intends to promote production and consumption of books. VAT collection is designed to enhance the outcome of this reading promotion plan. Generally, the applicable VAT rate on the sale of good in Thailand is 7%. At first, a sale of printed books, magazines and newspaper is exempt from VAT. The good news is that end-customer will not be charged for VAT when purchasing physical books, magazines and newspapers, although it cannot be denied the exempted VAT may cost a great deal to the tax authority.

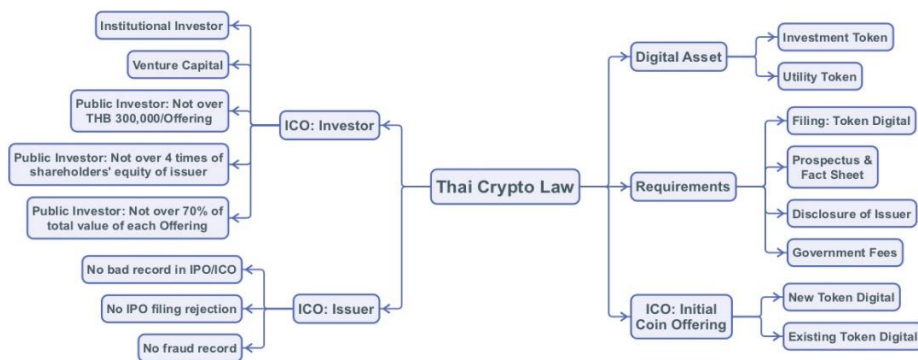
According to private rulings issued by the Thai Revenue Department ('TRD'), provision of e-book access is 'NOT' regarded as a sale of book, but rather a provision of service which is also subject to 7% VAT. However, to serve 'Digital Economy' and conform to the 'Tax Neutrality' basis between physical books and the electronic version, the TRD compromises these different tax treatments by issuing a Royal Decree to exempt VAT imposed from provision of online services where newspaper, magazines or books are in electronic form.

Starting from May 2015, the VAT law was amended NOT to charge VAT on downloading e-books (as a VAT exemption on provision of service) to be in line with printed products. Along with the growth of E-Commerce and Online Service, end-consumer can now enjoy the VAT free e-book products. This action was taken quite some time before the EU started to consider cutting VAT on e-books in 2018.

VAT & Audio Books

A thought might come across the mind of a minimalist. What about an audio book? The TRD has their answer for this question since 1995 (B.E. 2538) and it has not been overruled. Under the private Revenue Department's rulings, unless the audio format is attached to the printed book for

sale as one package with identical content to the book it is sold with, the sale of the audio book will be subject to VAT.

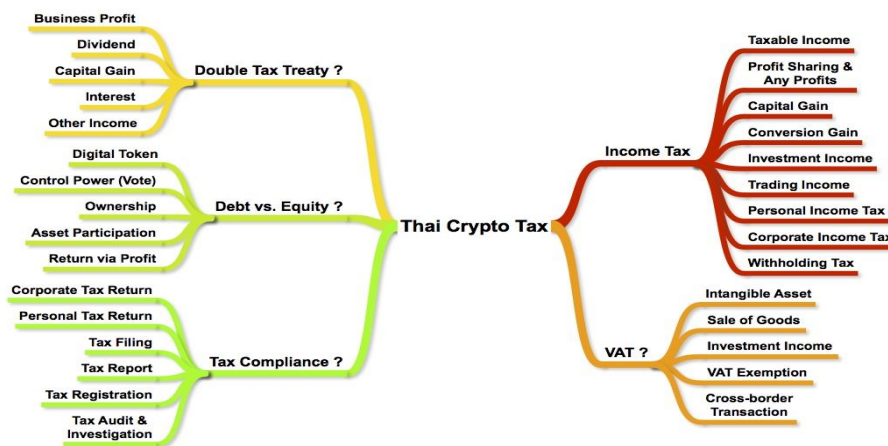


Digital Assets & Crypto Law and Taxation

In the age of digital economy, financial transactions and debt settlement methods are being transformed from a traditional cash payment to digital monies. The Thai Government finally issued its Emergency Decree in 2018 as a ‘Crypto Law’ to control ‘Digital Assets’ trading on the Thai exchange market. According to the Crypto Law, the Thai SEC is empowered to be the regulator for the issuing and trading digital assets including ICO (Initial Coin Offering) on the exchange market. In this regard, the Thai SEC issued its subordinated laws for ‘Digital Token Public Offering’ to govern many aspects in the digital market i.e. issuer, investor, type of digital asset, ICO, disclosure requirements as shown in the Mind Map.

In the same year (2018), in response to the new Crypto Law, the Revenue Department (‘TRD’) amended the Revenue Code to include ‘digital assets’ as taxable income for income tax purposes. Cryptocurrency or Digital Tokens is specified as ‘assessable income’ and shall be subject to income tax. In terms of VAT treatment, it has not yet been made clear whether trading of digital assets is regarded as sale of goods or provision of services under VAT law. It was mentioned that digital assets could be regarded as ‘intangible asset’. In addition, individual investors would be waived for VAT incurred from the trading. We believe the TRD will issue its official legislation to exempt the VAT soon.

Trading of cryptocurrency or digital tokens is subject to withholding tax at the rate of 15% which we notice that it is the same rate as the withholding tax that is imposed on interest payment.



On the basis that the income derived from trading digital assets is treated similarly to interest, the question would be under what rule the recognition of the digital assets in the books would follow according to the Thai accounting standard. We set out below the accounting standard for the treatments of equity and debt for your information.

ONE LAW OFFICE			Equity vs. Debt		ONE LAW OFFICE	
Difference Treatment	Debt	Equity				
Ownership / Control	No	Yes				
Redemption Period	Limit	No				
Return	Interest	Dividend				
Asset Participation	No	Yes				
Return on Liquidation	Before	After				

ONE Law's Comments

In relation to the VAT on e-books, from a different aspect, not being able to charge or claim input VAT incurred from the business could mean the e-publishers or online operators suffer from a

production cost in the form of VAT in order to produce the e-books or audio books. They become final consumers in this chain where VAT refund or input VAT cannot be claimed. The high price of the books would be unavoidable.

Ultimately, we cannot really say the VAT exemption scheme would benefit publication industry at its best as the business operators are excluded from the VAT system. We believe that if the VAT is 0%, it could be a win-win for both publishers and book purchasers. Given the zero VAT rate, VAT operators are still in the VAT system and will allow business to claim VAT incurred in connection with supplies and production. On this basis, the books pricing does not need to absorb the VAT the publisher is suffering from. As a result, a positive outcome could be more promising in terms of promoting reading culture in the country.

We further refer to Digital Assets or Crypto Monies, it will be a big challenge for Thai crypto market as many questions are still needed clarification, for example:

- 1) how to treat 'Digital Assets' as equity or debt under the law?
- 2) how to treat 'Digital Assets' for accounting purposes?
- 3) how to treat 'Digital Assets' for VAT purposes?
- 4) how to treat 'Digital Assets' in the view of double taxation among international tax schemes?
- 5) how to treat 'Digital Assets' under exchange control regulations?
- 6) how to treat 'Digital Assets' when it is under debt foreclosure and court execution?

#####

Article Keywords: Digital Economy, Digital Asset, E-book, Audio-Book, VAT Exemption, Tax Neutrality, Online Service, ICO, Initial Coin Offering, Crypto Law, Crypto Tax, Cryptocurrency

ONE Law: In-charge of this article

Yolapan Seetaraso yolapan@onelaw.co.th

Suwinai Wattanakorn suwinai@onelaw.co.th

Areeya Ananworaraks areeya@onelaw.co.th

Chinapat Visuttiapat chinapat@onelaw.co.th

For any further information, please contact:

Email: info@onelaw.co.th

Phone: +66(0)8-0554-8111