

STATUS OF DIGITAL TOKEN UNDER THAI LAWS

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ABSTRACT

A digital token is a kind of intangible electronic information but it has value and it can be applied in business as assets in order to determine the right on transactions in global trend, including Thailand, such as determination of personal right for investment in any project or activity or right of products acquisition etc. From the research, it is found that digital token in Thailand has status under the law on Digital Token according to the Emergency Decree on Digital Asset Businesses B.E. 2561 (2018). Any offer of digital tokens and digital asset business is supervised by the Office of the Securities and Exchange Commission under the law governing securities and exchange. Any profit sharing or other benefit derived from holding or acquiring the digital tokens or any benefit derived from transfer of digital tokens especially that can be estimated into money exceeding the amount of investment, is regarded as taxable income according to Section 40 of the Revenue Code and is subject to a deduction of 15% of such income according to Section 50 of the Revenue Code.

Keywords 1. Digital Tokens 2. Digital Assets 3. Electronic information

INTRODUCTION

Thailand has introduced the digital token in business of manufacturing and trading of goods to support the provision of service to financial sector and another services business. Due to its popularity, Thailand has announced 2 laws on digital token in May 2018. The first is the Emergency Decree on Digital Asset Businesses B.E. 2561 (2018) with an aim to supervise and control the application of crypto to currency and digital token as the tools of funding by selling them to public as medium of exchange, including sale of digital token in crypto currency and digital token center. Secondly, the Royal Decree to amend the Revenue Code (No. 19) B.E. 2561 (2018) has the purpose to collect personal income tax of ordinary person in case of holding or owning digital tokens or sale or exchange of crypto currency or digital tokens by prescribing that they will be the taxable income which is subject to tax. Since Thailand issues the two laws, there is the significant question of what the status of digital tokens under Thai laws is.

LITERATURE REVIEW

Definition of Digital Token

Section 137 of the Civil and Commercial Code specifies that “Things are physical objects.” Section 128 also prescribes that “Property includes things as well as incorporeal objects, susceptible of having a value and of being appropriated.” Ownership in any intangible asset which might have a value and may be appropriated, is property (Anon Mamao, 2017) and is subject matter of obligation (Sanunkorn Sothibandhu, 2018) in contract that is a source of debt (Seni Pramroj, 2016).

Section 3 of the Emergency Decree on Digital Asset Businesses B.E. 2561(2018) specifies that “digital token” means an electronic data unit created on an electronic system or network for the purpose of: (1) specifying the right of a person to participate in an investment in any project or business;(2) specifying the right of a person to acquire specific goods, specific service, or any specific other right under an agreement between the issuer and the holder, and shall include any other electronic data units of right as specified in the notification of the Securities and Exchange Commission.

Based on the abovementioned laws, it shows that digital token is a data for symbolic use which is issued for determining the right of a person. It is neither created as medium as money nor securities as implied by the Civil and Commercial Code of Thailand (Arnat Leemakdej, 2018).

Concept of Digital Token

The businesses normally raised fund from interesting person, which might be in the form of share

offering. However, as specified by the Civil and Commercial Code, funding currently has changed and is more variety and the investment in digital form is a new option for forward-thinking investors (Alisa Teerasakdapong, 2016).

Concept of Digital Funding

Digital funding has special features that the business operator may issue digital tokens for the purpose similar to benefit sharing to the investor from investment (Pariya Techamuanvivit, 2017). If it is compared with the digital currency, such as Bitcoin, it can be implied that the fluctuation of value of digital token is not related to amount of transactions (Pongsakorn Puapattanakul, 2017). In digital funding, the digital token shall be similar to equity instrument to provide the right of use in kind of property (Accounting Standards Committee, 2018), which is the proposal of the digital token (The Ontario Securities Commission, 2018)

Concept of Digital Government

Thai government has determined the Digital Government Development Agency (Public Organization, 2017) to escalate and develop the government to be able to connect data across government agencies (Connected Government) with an important aim to provide the Digital Service Standard in terms of Thailand's economy by using digital technology that is related to digital investment (The Secretariat of the House of Representatives, 2016). This is the change to increase capability of internet use (Sak Segkhoonthod, 2017). It is noticeable that Thailand has lacked of research on digital marketing in relation to any government agency, including consumer behaviour of people in Thailand because the new digital technology has rapidly come to Thailand (Guntalee Ruenrom, 2018).

Laws on Digital Tokens

Thailand has 2 laws on digital tokens as follows:

(1) Emergency Decree on Digital Asset Businesses B.E. 2561 (2018): This Emergency Decree is enacted to supervise and control them by empowering the Securities and Exchange Commission to have duty and power to determine policy on promotion and development including supervision and control of digital asset and the digital asset business operators (Bangkokbiznews, 2018).

(2) the Royal Decree to amend the Revenue Code (No. 19) B.E. 2561 (2018): This law covers the tax collection from profit sharing or benefit especially derived which can be converted into money in the amount more than investment in digital tokens. In addition, it is subject to 15.00% withholding tax deduction of such amount. Then, such amount shall be subject to 15.00% withholding tax deduction which is the withholding tax deduction at source (Tassanee Luengruengrong, 2018).

Related Works or Discussion

In Thailand, digital token is regarded as asset which can be used in any business transaction and is controlled by the Emergency Decree on Digital Asset Businesses B.E. 2561 (2018) supervised and controlled by the Securities and Exchange Commission. Moreover, digital token value can be estimated in a manner as an assessable income in terms of tax under the Revenue Code of Thailand. Such legal measure to enforce the digital token is the confirmation that the digital tokens are very popular in all level of businesses.

METHODOLOGY

This research is documentary research.

Documentary Research

This part of research is for the purpose of studying the laws on digital tokens" and its problems with the details as follows:

Group of example shall comprise of the followings:

- 1) Academic documents and research on digital tokens
- 2) Supreme court judgments

Data Collection and Data Analysis

The researcher will create the form of data collection and then shall analyse from the contents.

Data Collection Location

Textbooks, books, articles, research, provision of laws in Thailand and of other counties, and thesis including internet databases.

RESULTS

Digital token in Thailand is deemed as digital assets according to Emergency Decree on Digital Asset Businesses B.E. 2561 (2018). Any offer to sell digital tokens and digital token business are supervised and controlled by the Securities and Exchange Commission and the Stock Exchange of Thailand according to the law on the Securities and Stock Exchange of Thailand. The profit sharing or other benefit from holding or acquisition of digital tokens or benefit derived from transferring of digital tokens which can be estimated into money in the amount exceeding the investment shall be deemed as assessable income according to Section 40 of the Revenue Code and shall be subject to 25% withholding tax of such amount according to Section 50 of the Revenue Code.

CONCLUSION AND FUTURE WORK

In Thailand, although digital tokens are not tangible objects, it still has value and can be deemed as asset according to the Civil and Commercial Code. However, as Thailand has enacted specific laws to prescribe the status of the digital token under Emergency Decree on Digital Asset Businesses B.E. 2561 (2018), all transactions relating to digital tokens are subject to these laws. Any profit sharing or benefit derived from selling digital tokens is also subject to tax.

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