

Legal Update

Capital Gains Tax Exemptions for Investment in Startups

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Generally, capital gains are subject to personal or corporate income tax (as the case may be) under the Revenue Code. By virtue of the Royal Decree issued under the Revenue Code on Tax Exemption (No. 750) B.E. 2565 (A.D. 2022) (the “**Royal Decree No. 750**”), the tax exemptions on the capital gains arising from a sale of investment, whether directly or indirectly through Venture Capital (VC) or a Private Equity Trust (PE Trust), in qualified startups in targeted industries, will remain in place until 30 June 2032. This measure aims to strengthen Thai startups and tech companies, attract foreign tech investment, create more jobs, and drive Thailand’s economic growth.

Qualified Startups

For investors to qualify for the capital gains tax exemptions under the Royal Decree No. 750, startups in which the investors have invested, shall have met the following key criteria (the “**Qualified Startups**”):

1. be incorporated under the laws of Thailand;
2. engage in a business within one of the following targeted industries:
 - 2.1 next generation automotive industry;
 - 2.2 smart electronics industry;
 - 2.3 affluent, medical and wellness tourism industry;
 - 2.4 agriculture and biotechnology industry;
 - 2.5 food for future industry;
 - 2.6 automation and robotics industry;
 - 2.7 aviation and logistics industry;
 - 2.8 biofuels and biochemicals industry;
 - 2.9 digital industry;
 - 2.10 medical hub industry;
 - 2.11 defense industry;

- 2.12 industries that directly and significantly contribute to the circular economy such as waste-to-fuel production and water resource management;
 - 2.13 human resource development and research and development (R&D) for the aforementioned targeted industries; and
 - 2.14 any other industries consistent with the 20-Year National Strategy, as approved by the Policy Committee on National Competitiveness Enhancement for Targeted Industries;
3. develop or apply technology or innovation as a fundamental aspect of its business operations, which must be certified by either: (i) the National Science and Technology Development Agency (NSTDA); (ii) the Digital Economy Promotion Agency (DEPA); or (iii) the National Innovation Agency (NIA) (the “**Certified Business**”)¹; and
 4. at least 80% of its total income in each accounting period is generated from the Certified Business for two consecutive accounting periods prior to the date of sale of investment or the dissolution of VC or PE Trust (as the case maybe).

Tax Privileges for the Investors

Under the Royal Decree No. 750, capital gains tax exemptions are granted to investors in the following ways:

1. Direct Investment in Qualified Startups

A natural person or legal entity, whether Thai or foreign (including a VC or a PE Trust) that directly invests in the Qualified Startups shall be exempt from personal or corporate income tax (as the case may be) on the capital gains arising from the sale of shares in the Qualified Startups, provided that the investor has held the investment for at least 24 months prior to the date of sale.

2. Indirect Investment through Thai VC or PE Trust

An investor, who indirectly invests in the Qualified Startups through a qualified VC or PE Trust² and holds shares or trust units in such VC or PE Trust for at least 24 months prior to the date of sale, shall be eligible for the following tax exemptions:

- 2.1 if a VC or PE Trust has no retained earnings, capital gains tax on the sale of shares or trust units in the VC or PE trust will be exempt in proportion to the investment percentage of the VC or PE Trust in the Qualified Startups; and
- 2.2 if a VC or PE Trust has retained earnings with at least 80% derived from income generated by the Qualified Startups or its investment in the Qualified Startups, respectively for two consecutive accounting periods prior to the date of sale, a

¹ While the certification is subject to a maximum period of 10 years until 30 June 2032, it is first valid for five years, with a requirement to renew. Unless renewed, the capital gains tax exemptions will no longer be applicable to the investor(s).

² The VC or PE Trust shall possess the following key qualifications: (i) be incorporated under the laws of Thailand; (ii) have a paid-up capital of at least Baht 20 million; and (iii) be duly registered with the Office of the Securities and Exchange Commission of Thailand.

full exemption from capital gains tax on the sale of shares or trust units in the VC or PE Trust shall be granted.

In addition, personal or corporate income tax on capital gains arising from the dissolution of a VC or PE Trust shall be exempt in proportion to the retained earnings derived from income generated by the Qualified Startups or its investment in the Qualified Startups, respectively.

This document is solely intended to provide an update on recent developments in Thailand's legislation and is not purported to provide a legal opinion, or legal advice to any person. Stakeholders are advised to seek professional legal counsel for specific legal guidance related to the above issue.