KPMG

Film Financing and Television programming

A Taxation Guide

Now in its eighth edition, KPMG LLP's ("KPMG") Film Financing and Television Programming: A Taxation Guide (the "Guide") is a fundamental resource for film and television producers, attorneys, tax executives, and finance executives involved with the commercial side of film and television production. The guide is recognized as a valued reference tool for motion picture and television industry professionals.

Doing business across borders can pose major challenges and may lead to potentially significant tax implications, and a detailed understanding of the full range of potential tax implications can be as essential as the actual financing of a project. The Guide helps producers and other industry executives assess the many issues surrounding cross-border business conditions, financing structures, and issues associated with them, including film and television development costs and rules around foreign investment. Recognizing the role that tax credits, subsidies, and other government incentives play in the financing of film and television productions, the Guide includes a robust discussion of relevant tax incentive programs in each country.

The primary focus of the Guide is on the tax and business needs of the film and television industry with information drawn from the knowledge of KPMG International's global network of member firm media and entertainment Tax professionals.

Each chapter focuses on a single country and provides a description of commonly used financing structures in film and television, as well as their potential commercial and tax implications for the parties involved. Key sections in each chapter include:

Introduction
A thumbnail description of the country's film and television industry contacts, regulatory bodies, and financing developments and trends.

Key Tax Facts
At-a-glance tables of corporate, personal, and value-added (VAT) tax rates; normal nontreaty withholding tax rates; and tax year-end information for companies and individuals.

Financing Structures
Descriptions of commonly used financing structures in film and television production and distribution in the country and the potential commercial tax implications for the parties involved. The section covers rules surrounding co-productions, partnerships, equity tracking shares, sales and leaseback, subsidiaries, and other tax-efficient structures.

Tax and Financial Incentives
Details regarding the tax and financial incentives available from central and local governments as they apply to investors, producers, distributors, and actors, as well as other types of incentives offered.

Corporate Tax
Explanations of the corporate tax in the country, including definitions, rates, and how they are applied.

Personal Tax
Personal tax rules from the perspective of investors, producers, distributors, artists, and employees.

Digital Media
For the first time, we have included a discussion of digital media tax considerations recognizing its growing role in the distribution of film and television content.

KPMG and Member Firm Contacts
References to KPMG and other KPMG International member firms' contacts at the end of each chapter are provided as a resource for additional detailed information.

Please note: While every effort has been made to provide up-to-date information, tax laws around the world are constantly changing. Accordingly, the material contained in this publication should be viewed as a general guide only and should not be relied upon without consulting your KPMG or KPMG International member firm Tax advisor.

Production opportunities are not limited to the countries contained in this Guide. KPMG and the other KPMG International member firms are in the business identifying early-stage emerging trends to assist clients in navigating new business opportunities. We encourage you to consult a KPMG or KPMG International member firm Tax professional to continue the conversation about potential approaches to critical tax and business issues facing the media and entertainment industry.

Thank you and we look forward to helping you with any questions you may have.

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Thailand

Introduction

A foreign company carrying on business in Thailand, whether through a branch, an office, an employee, or an agent, is subject to a current rate of 20 percent tax on profits derived from its business in Thailand. An individual, depending on the income earned, is subject to tax at the current progressive rates ranging from 0 to 35 percent on income earned in Thailand.[1] There are 61 double tax agreements in force between Thailand and other countries to reduce taxes levied on foreign filmmakers.

Key Tax Facts

Corporate income tax rate	20%
Highest personal income tax rate	35%
Value added tax rate	7%
Normal non-treaty withholding tax rates:	
Dividends	10%
Interest	15%
Royalties	15%
Tax year-end: Companies	Accounting year-end
Tax year-end: Individuals	Calendar year-end

Film Financing

Financing Structures

Foreign currencies can be transferred or brought into Thailand without limit. Any person receiving foreign currencies from abroad is required to repatriate such funds immediately and sell to an authorized bank or deposit them in a foreign currency account with an authorized bank within 360 days of receipt, except for foreigners temporarily staying in Thailand for not more than three months, foreign embassies, international organizations including their staff with diplomatic privileges and immunities, and Thai emigrants who are permanent residents abroad or working abroad.

Foreign currency proceeds from the sale of exported goods from Thailand in an amount equivalent to USD 50,000 or above shall be repatriated immediately after payment is

[1] The progressive rates ranging from 0 to 35 percent are applicable for 2018 in accordance with the Act amending the Revenue Code (No. 44) B.E. 2560.

received and within 360 days from the export date. The proceeds must be sold to an authorized agent or deposited in a foreign currency account within 360 days of receipt.

Thai residents are allowed to maintain foreign currency accounts with authorized banks as specified by the Bank of Thailand and make deposits into such accounts under the following conditions:

(1) Foreign currencies originating from abroad (foreign source) can be deposited into foreign currency accounts without limit.

(2) Foreign currencies purchased or borrowed from authorized banks (domestic source) can be deposited into two types of foreign currency accounts:

(i) Foreign currency accounts with future obligations: Deposits can be made in an amount not exceeding future obligations to pay in foreign currencies to entities abroad. Such obligations include loan repayments to authorized banks.

(ii) Foreign currency accounts without future obligations: The total outstanding balance shall not exceed USD 500,000 for both a naturalized person and a juristic person.

(3) Deposit of foreign currency notes and coins must not exceed USD 10,000 per person per day.

Nonresidents may maintain foreign currency accounts with authorized banks in Thailand without limit. The accounts can be freely credited with funds originating from abroad. Payments from Thai residents or borrowings from authorized banks can be deposited subject to supporting evidence. Balances on such accounts may be freely withdrawn.

The amount of foreign currency that may be remitted abroad for business expenses, including the payment of goods, services, interest, profits, and dividends, is unlimited but must be accompanied by required supporting documentation.

Foreign direct investments by Thai residents or the provision of loans are subject to certain conditions as follows:

(1) A Thai company is allowed to invest in an overseas business entity whose shares are held by the Thai company by not less than 10 percent, or to invest or lend to affiliated business entities abroad as necessary.

(2) A Thai company is allowed to lend to nonaffiliated business entities abroad up to USD 50 million per year.

(3) A naturalized Thai is allowed to invest in an overseas business entity whose shares are held by that person by not less than 10 percent, or to invest or lend to its affiliated business entities abroad as necessary.

Fund transfers for such investment or lending to business entities abroad must be in foreign currencies only, whereas fund transfers for investment or lending to business entities in Vietnam or Thailand's neighboring countries for trade and investment in Thailand or those countries can be in foreign currencies or in Thai Baht.

Remittance for the purchase of immovable property in an amount not exceeding USD 10 million per person per year is allowed.

Institutional investors—namely Government Pension Fund, Social Security Fund, provident funds, mutual funds (excluding private funds), securities companies, insurance companies, specialized financial institutions, Thai juristic persons with assets of at least THB 5,000 million and companies listed in the Stock Exchange of Thailand—are allowed to invest in foreign securities without limit. Such investment shall not exceed the limit set by the supervisory authority, directors, or managements of each institutional investor. Other investors can invest in foreign securities through private funds or securities companies without limit, provided that such investment shall be subject to the guidelines of and not exceed the limit set by the Thai Securities and Exchange Commission.

Remittance to Thai emigrants with permanent residence abroad are allowed up to an annual limit of USD 1 million per person, provided the funds are derived from the emigrant's personal assets. Remittances of funds abroad between relatives are allowed up to an annual limit of USD 1 million per person.

Certain remittances abroad in both foreign and local currency must be made with the appropriate deduction of withholding tax as required by the Thai Revenue Code.

Co-production

Currently, Thailand has concluded DTAs with 61 countries that are in force.

Foreign filmmakers are required to hire a local co-coordinator (company or individual, as listed in www.thailandfilmoffice.org) that is officially registered with the Thailand Film Office, a government agency under the Office of Tourism Development. Each co-coordinator must represent the foreign filmmaker in obtaining any necessary permits. He is also responsible for representing the film company in any matter arising both during and after the completion of shooting in Thailand.

When a permit is granted, a monitoring officer will be appointed by the Thailand Film Office. The monitoring officer is sent by the concerned government agencies to monitor and give advice at the shooting locations. A signed sticker is applied to all film/tape used and serves as confirmation that its content has been officially monitored. Filming is not allowed, under any circumstances, without the acknowledgement of the monitoring officer.

A shooting permit enables foreign filmmakers to shoot in Thailand; however, separate permits are required for specific locations such as National Parks or Historical Parks. All arrangements should be made as far as possible in advance of shooting dates.

Partnerships

The three types of partnerships in Thailand differ principally in the liability attached to each.

An unregistered ordinary partnership has partners who are all jointly liable, without any limitation on the partnership's total obligations. A new partner in an unregistered ordinary partnership becomes liable for all obligations incurred by the partnership before or after their admission to the partnership. This type of partnership is not a legal entity and is subject to taxation as if it were an individual.

A registered ordinary partnership is a juristic entity having a separate and distinct personality from each of the partners by virtue of its registration in the Commercial Registrar. A registered ordinary partnership is treated as a corporate entity for income tax and liability purposes.

A limited partnership is one in which there are one or more partners whose individual liabilities are limited to their respective contributions, with one or more of the partners being jointly liable without any limitation for all the obligations of the partnership. A limited partnership is taxed as a corporate entity.

Equity Tracking Shares

The term “equity tracking shares” refers to shares that provide for dividend returns dependent on the profitability of a film production company’s business. These shares have the same rights as the production company’s ordinary shares except that their dividends are profit-linked and they carry preferential rights to assets on a liquidation of the company.

In Thailand, preference shares normally carry a fixed rate of return. Equity tracking shares are not common in the Thai market.

Yield Adjusted Debt

A film production company may sometimes issue a “debt security” to investors. Its yield may be linked to revenue from specific films. The principal would be repaid on maturity, and there may be a low (or even nil) rate of interest stated on the debt instrument. However, at each interest payment date, a supplementary (and perhaps increasing) interest payment may be paid where a predetermined target is reached or exceeded (such as revenue or net cash proceeds).

For Thailand, this “debt security” would normally be referred to as a “structured note.” When a film production company issues a structured note in Thailand whose yield is based on a target, such as revenue or cash proceeds, Thai law requires procedures under the Notification of the Office of the Securities and Exchange Commission Thor Jor 12/2552 to be followed.

Other Tax-Effective Structures

ATA Carnet

A crew importing equipment into Thailand for film production and goods under the auspices of the ATA Carnet agreement (temporary import provisions), which are to be used for the purpose of filming or as samples and re-exported, are required to inform the customs officer at the red channel for customs clearance at the Passenger Control Division, Suvarnabhumi International Airport Customs Bureau, or such other place designated by the Regional Customs Bureau.

On the departure date, the crew must present the ATA Carnet document, the equipment for film production, and goods for inspection. Otherwise, the equipment or goods will be considered as not having been re-exported and customs duties and taxes will be levied.

Tax Incentives

Thai taxation laws do not have general anti-avoidance provisions; however, the Revenue Department has the authority to conduct an investigation into any company or individual's business affairs to determine whether the respective tax returns disclose correct and complete information.

Tax laws generally allow expenses to be deducted, provided that they are incurred exclusively for the purpose of acquiring profits or for the purpose of their business. Therefore, any scheme that reduces a taxpayer's taxable income by virtue of its expenses not being for the acquisition of profit, or for the purpose of its business, may lead to such expenses being disallowed. Artificial, fictitious, or excessive expenses are nondeductible.

Various penalties, surcharges, and terms of imprisonment can be imposed on companies and officers involved in any arrangements whereby tax has been evaded. The severity of the punishment depends upon the particular circumstances.

The Board of Investment (BOI) is the government agency responsible for granting incentives to encourage private-sector investment in priority areas.

The types of entities that may be promoted by the BOI and granted investment incentives are a limited company, a foundation, or a cooperative. Application for promotion may be submitted in accordance with the rules, procedures, and forms prescribed by the BOI prior to the formation of the qualified promoted company.

The BOI grants two major types of tax incentives to promoted companies, namely:

- Exemption or reduction of tariffs on imported machinery and equipment, as well as raw materials for the promoted activity, and
- Exemption from income tax on net profits and dividends for a period of time.

The extent of these incentives varies according to the nature of the promoted business.

With regard to the filming industry, the BOI grants a corporate income tax exemption that will expire on the earlier of: (a) a period of five years or (b) when the corporate income tax savings reach the capital investment costs, excluding costs of land and working capital for these activities:

(1) Thai motion picture production (BOI Activity 7.20):

- Thai motion picture production shall include the production of movies, documentaries, or television programs, but does not include the production of advertisements.
- Revenue exempt from tax shall include:
    i. Revenue obtained from the sale of copyrights, including the sale of motion pictures in other forms
    ii. Revenue obtained from a revenue-sharing scheme from movie theaters and motion picture distributors.

(2) Motion picture supporting services (BOI Activity 7.21)

Motion picture supporting services shall include documentaries, television programs, animations, and commercials, which have a scope of business as follows:

— Rental services of movie production equipment and/or movie production props must have main equipment/machinery including cameras, grip equipment, light sets, etc.

— Film development and duplication services must have main equipment/machinery including film development machines, film duplication machines, digital film duplication machines, etc.

— Sound recording services must have main equipment/machinery including digital sound recorders, digital sound editing machines, digital sound mixing machines, etc.

— Picture technical services must have machines and equipment capable of creating special pictures that are not possible with cameras. The service providers must have main equipment/machinery, including standard-definition/high-definition digital recorders, editing suites, digital compositing, and special effect creations, etc.

— Coordination services for foreign movie production in Thailand must include coordinating with related government agencies for permits, location scouting, and sourcing of staff and movie equipment

— Studio rental services for movie and television program production

Other incentives

Effective January 1, 2017, the Department of Tourism has introduced an incentive measure to promote foreign film production in Thailand in order to promote film production, co-production and post-production film services in Thailand. Should the requirements under the incentive be met, including the obtaining of a filming permit, the hiring of a local coordinating company and a minimum local spend of more than 50 million Thai Baht, the successful applicant may receive a rebate of 15–20 percent. The maximum rebate per project is 75 million Thai Baht. An application form and certain supporting documentation will need to be prepared and submitted to the Department of Tourism and will be considered by the incentive committee.

Taxation

Thai taxes are imposed both at the national and local levels. Tax collections are administered by the Ministry of Finance through three departments:

— The Customs Department, which is responsible for import and export duties

— The Revenue Department, which attends to the collection of income tax, value added tax, specific business tax, and stamp duty

— The Excise Department, which collects excise taxes levied on certain commodities.

Local governing bodies deal with the collection of property and municipal taxes.

The Revenue Code is the principal tax law in Thailand. The Code governs personal income tax, corporate income tax, value added tax, specific business tax, and stamp duty. The Customs Act governs tariff on imports and exports. Other laws govern excise tax and property tax.

A foreign company carrying on business in Thailand, whether through a branch, an office, an employee, or an agent is generally subject to a corporate income tax rate of 20 percent on profits derived from business in Thailand. .

A foreign company that does not carry on business in Thailand will be subject to withholding tax on certain categories of income derived from Thailand. The withholding tax rates may be reduced or exempted depending on the type of income under the provisions of a DTA.

Tax treaties between Thailand and other countries cover taxes on income and capital applicable to individuals and juristic entities, but value added tax, specific business tax and municipal taxes are not covered under any tax treaties.

Thai tax treaties generally place a resident of a contracting state in a more favorable position for Thai tax purposes than under the domestic law. In general, Thai tax treaties provide an income tax exemption on business profits (industrial and commercial profits) earned in Thailand by a resident of another contracting state if it does not have a permanent establishment in Thailand. In addition, withholding taxes on payments of income to a foreign juristic entity not carrying on business in Thailand may be reduced or exempted under a tax treaty.

Corporate Income Tax

Juristic companies and partnerships organized under Thai law are subject to income tax on income earned from sources within and outside of Thailand. The definitions of juristic companies and partnerships for income tax purposes are broader than those under the Civil and Commercial Code. Juristic companies and partnerships for income tax purposes include, but are not limited to, private and public limited companies, registered ordinary and limited partnerships, joint ventures, and foundations and associations.

A branch of a foreign corporation is taxed on income derived from sources within Thailand. Tax is imposed on the net profits of a juristic company or partnership, determined in accordance with generally accepted accounting principles, subject to adjustments required in the Thai Revenue Code.

A corporate taxpayer must file a mid-year income tax return by the eighth month of its accounting period, and an annual income tax return within 150 days from the end of its accounting period. Any tax liabilities are payable with these returns. Except for newly incorporated companies, an accounting period is defined as 12 months. An annual income tax return must be accompanied by audited financial statements.

Tax on corporate net profits is computed at a current rate of 20 percent for all limited companies, juristic partnerships, and branches of foreign companies. Where a juristic company or partnership organized under a foreign law enters Thailand to produce a motion picture, but subsequently derives no income from the production, it should not be deemed to be carrying on business and receiving income or making profit in Thailand; therefore, such juristic company or partnership should not be liable to pay income tax under Section 66 and Section 76 bis of the Thai Revenue Code.

Where the production coordinator of a foreign motion picture in Thailand is a juristic company or partnership organized under Thai law or a foreign law and carrying on business in Thailand, income received from the coordination of the production of such a motion picture should be included in the computation of corporate income tax under Section 66 and

Section 76 bis (only in respect of foreigners) of the Thai Revenue Code. If the production coordinator of a foreign motion picture being filmed in Thailand is a juristic company or partnership organized under a foreign law and not carrying on business in Thailand, such a person should only be subject to corporate income tax on income received from coordinating the production in Thailand and where such income is paid from Thailand.

Personal Income Tax

The Revenue Code describes the various types of income subject to personal income tax (PIT). Some types of income entitle the individual to standard deductions.

PIT is a direct tax levied on the income of a "person." A person means an individual, an ordinary partnership, a non-juristic body of persons, a deceased person and an undivided estate. An individual is regarded as a Thai tax resident if he/she resides in Thailand at one or more times for an aggregate period of 180 days or more in a calendar year. In general, a person liable to PIT has to compute his tax liability, file a tax return, and pay tax, if any, on a calendar year basis. The taxable base is determined by deducting expenses and allowances from all assessable income. Tax is levied on the taxable base at the current progressive rates ranging from 0 percent to 35 percent.

In the production of a foreign motion picture in Thailand, a foreign actor, a member of a production crew, and a production coordinator, whether their residency is in Thailand or in a foreign country, is deemed as a person who derives assessable income from Thailand and is liable to pay PIT under Section 41, first paragraph, of the Thai Revenue Code.

A foreign actor must file a tax return and pay PIT twice a year (half-year PIT and annual PIT). The income of a foreign actor subject to tax consists of assessable income or remuneration from carrying on the acting profession in a foreign motion picture in Thailand, any reward and benefit received from acting, including transportation expenses, allowances, personal accommodation, or any other remuneration received. Provided that the transportation, accommodation, and other allowances are actually fully utilized to pay for actual business expenses, the allowances are exempt from tax.

If a foreign actor resides in Thailand, he is entitled to deduct allowances for his spouse and children, whether or not his spouse and children are in Thailand. However, a foreign actor who does not reside in Thailand can only deduct allowances for his spouse and children if his spouse and children reside in Thailand.

Withholding Tax

Payments of employment income and certain specific types of assessable income to natural or juristic persons are subject to income tax at various rates depending on the type of assessable income. Taxes withheld by the payer must be remitted within seven days after the end of the month of payment, together with a return to the Thai Revenue Department. The recipient of the assessable income is provided with a withholding tax certificate and can use the tax withheld at source as a credit against their annual or midyear income tax payable for the respective tax year.

Interest income is subject to 15 percent withholding tax, and dividend income is subject to 10 percent withholding tax. A Thai resident may consider the withholding tax on interest and dividend income as a final tax, or include the interest or dividend in their assessable income and claim a credit for the withholding tax. However, the withholding tax is a final tax for a nonresident.

A person who pays income to a foreign actor must compute and deduct tax at source and remit the tax to the tax authority within seven days of the end of the month in which the payment was made.

The following withholding taxes apply to actors who are resident in Thailand or non-Thai tax residents that conduct the performance in Thailand, where the payer of the income is an individual, ordinary partnership, or group of persons who are not juristic; a company or juristic partnership; other juristic persons; a company or juristic partnership; or other juristic person:

- Progressive rates ranging from 0 percent to 35 percent if the actor is a resident in a foreign country
- 10 percent if the actor is a resident in a foreign country and the producers of the motion picture or television program have received permission to produce the film or program in Thailand by the Subcommittee for the Approval to Film a Foreign Motion Picture in Thailand; and
- 5 percent if the actor is resident in Thailand.

However, withholding tax at the rate of 1 percent applies to actors and other entertainers subject to PIT (e.g., an entertainer performing in theatre, motion picture, or radio; a television artist; a musician; a sportsman; or an artist who performs either individually or in a group) where the payer of the income is the Thai government, a Thai government agency, municipality, or local authority.

Income for Organizers

An organizer is a person who arranges actors for a film. Income for organizers is considered income from another business activity under the Thai Revenue Code. This refers to types of income such as ticket fees or other income arising in connection with the organization for a public artist's performance.

Withholding tax at the rate of 1 percent applies to an organizer who is subject to PIT or an organizer who is a company or juristic partnership that carries on business in Thailand, where the payer of the income is the Thai government, a Thai government agency, a municipality, or local authority.

Withholding tax at the rate of 3 percent applies to an organizer who is: (1) subject to PIT, or; (2) an organizer who is a company or juristic partnership established under Thai laws (excluding a foundation or an association), or (3) an organizer who is a company or juristic partnership established under foreign laws with a permanent branch office in Thailand.

Withholding tax at the rate of 5 percent applies to an organizer who is a company or juristic partnership established under foreign laws, which carries on business in Thailand without a permanent branch office in Thailand where the payer of the income is a company or juristic partnership, or other juristic person, and the payment is 1,000 Baht or more.

Income for Contractors
A contractor is a person who sources actors. Income for contractors is considered as service income under the Thai Revenue Code. This refers to income arising from contracts for actors to perform in Thailand. The rate of standard deduction for this type of income is 50 percent (but cannot exceed 100,000 Baht).

Withholding tax at the rate of 1 percent applies to a contractor who is a company or a juristic partnership that carries on business in Thailand where the payer of the income is the Thai government, a Thai government agency, municipality, or local authority.

Withholding tax at the rate of 3 percent applies to a contractor who is a company or juristic partnership that carries on business in Thailand where the payer of the income is a company or juristic partnership or other juristic person.

Withholding tax at the rate of 15 percent applies to a contractor who is a nonresident individual and subject to PIT where the payer of the income is an individual, partnership, company, association, or group of persons. WHT at 15 percent applies to a contractor who is a company or juristic partnership established under foreign laws and does not carry on business in Thailand where the payer of the income is the Thai government, a Thai government agency, municipality, a local authority, a company or juristic partnership or other juristic person.

Income for Producers or Coordinators
Income such as salaries, wages, consideration, etc., is considered to be employment income under the Thai Revenue Code. Income such as remuneration for services, commission, or brokerage is considered to be service income under the Thai Revenue Code. The rate of standard deduction for either type of income is 50 percent (but cannot exceed 100,000 Baht).

Withholding tax at the rate of 3 percent applies to a person who is a company or a juristic partnership that carries on a business in Thailand where the payer of the income is a producer or coordinator who is a company or juristic partnership or other juristic person.

Withholding tax at the rate of 10 percent applies to a person who is a foundation or an association (excluding those specified by the Finance Minister pursuant to section 47(7)(b) of the Thai Revenue Code) where the payer of the income is a producer or coordinator who is a company or a juristic partnership or other juristic person.

Withholding tax at the rate of 15 percent applies to a person who is a nonresident individual and subject to PIT where the payer of the income is a producer or a coordinator who is an individual, a partnership, a company, an association, or a group of persons. This also applies to a person who is a company or juristic partnership established under foreign laws and does not carry on business in Thailand where the payer of the income is a producer or coordinator who is a company or juristic partnership or other juristic person.

Value Added Tax

Generally, Value Added Tax (VAT) is levied at the rate of 7 percent on the value of goods sold and services rendered at every level, including importation (the rate is legislated as 10 percent; however, on an annual basis, it has been annually reduced to 7 percent). However, certain categories of goods and services (e.g., exports) are zero-rated (i.e., subject to 0 percent VAT), and some other categories of goods and services (e.g., sale of agricultural products) are exempt from VAT.

Stamp Duty

Generally, stamp duty (SD) is a tax imposed on certain documents executed in Thailand. Instruments listed on the SD Schedule of the TRC are subject to SD at the specified rates therein. The party who has a duty to pay SD is normally the income earner under such instrument. A hire of work contract (i.e., a service contract) is subject to SD at the rate of 0.1percent of the remuneration payable under the contract. Generally, the SD is payable within 15 days of the contract date.

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