



Heading :

Thailand passes Transfer Pricing Legislation

The following report may be of interest to :

Multinational Enterprises

Summary :



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On 27 September 2018, the National Legislative Assembly, Thailand's acting parliamentary body, passed the Revenue Code Amendment Act to introduce specific transfer pricing provisions into the income tax law. The law is now waiting to be announced in the Royal Gazette for its official enactment. It will apply to the accounting periods starting on or after 1 January 2019.

As not all the necessary details are contained in the final provisions, the Ministry of Finance and the Revenue Department will issue further subordinate regulations to provide additional clarifications and implementation guidance to taxpayers.

The notable points of the final transfer pricing provisions are as follows:

1. Where it is believed that there has been a transfer pricing mischief, Revenue officers have the power to uplift or reduce taxpayers' revenue and expenses to the arm's length price (i.e. primary adjustment). If such mischief resulted in a tax shortfall, a secondary adjustment, which arises from imposing tax on a constructive transaction – usually in the form of deemed dividends, would also apply.
2. If transfer pricing assessments result in a tax refund, taxpayers are entitled to claim refunds within 60 days from the date of receiving the tax assessment letter or three years from the last day of the time limit prescribed by law for filing tax returns.
3. Taxpayers with annual turnover of Baht 200 million or more and do not meet the exemption conditions will be required to submit a transfer pricing disclosure form – disclosing information on the related parties and related-party transactions, at the time of filing their annual tax returns.

This group of taxpayers are also required to prepare full transfer pricing documentation and keep it for five years from the date of filing the disclosure form – to be submitted upon request. For the first time that Revenue officers request full transfer pricing documentation, taxpayers can have up to 180 days to make the submission. For subsequent requests, the deadline for submission will be 60 days but can be extended to 120 days if the taxpayer has justifiable reasons for being unable to meet the 60 days deadline.

4. Failure to comply with the transfer pricing disclosure, or submitting incorrect information, would be subject to a penalty of not exceeding Baht 200,000.



PwC's observations

In the final transfer pricing provisions, the 'corresponding adjustment' (i.e. pricing adjustment for taxpayer on the opposite end of the transaction) clause, which appeared in the first draft released to the public back in 2015, was removed. Further, with much discussions in the public forum that VAT would not apply if there are transfer pricing adjustments by virtue of Section 71 bis, this was not explicitly stated in the provision.

As Thailand is now a BEPS Associate member, Thailand will adopt the three-tiered approach to transfer pricing documentation. While a threshold for transfer pricing disclosure has been set at Baht 200 million or more, it appears that this may be applicable only to the disclosure form and Thailand's Local File – but not the Master File and/or CbCR.

It is anticipated that these unanswered issues would be addressed in the subordinate regulations. The subordinate regulations are due to be released shortly after the enactment of the Revenue Code Amendment Act. PwC will update this information as it becomes clear.

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