PwC Tax Panel

Maximise Shareholder Value 2017

18 October 2016

www.pwc.com/th
Agenda

Section one - Challenges in the digital economy
Section two - Legal perspective for online transactions
Section three - Developments in TP documentation requirements
Section four - OECD guidance on intra-group services
Challenges in the digital economy
## BEPS Action Items

<table>
<thead>
<tr>
<th>No</th>
<th>Action</th>
<th>Area of focus</th>
<th>OECD Deadline(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Address the tax challenges of the digital economy</td>
<td>Digital economy</td>
<td>December 2015</td>
</tr>
<tr>
<td>2</td>
<td>Neutralise the effects of hybrid mismatch arrangements</td>
<td>Coherence (Hybrids)</td>
<td>September 2015</td>
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<td>3</td>
<td>Strengthen CFC rules</td>
<td>Coherence (CFCs)</td>
<td>September 2015</td>
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<td>4</td>
<td>Limit base erosion via interest deductions and other financial payments</td>
<td>Coherence (Debt)</td>
<td>December 2015</td>
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<td>5</td>
<td>Counter harmful tax practices more effectively, taking into account transparency and substance</td>
<td>Coherence ('Deals')</td>
<td>December 2015</td>
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<tr>
<td>6</td>
<td>Prevent treaty abuse</td>
<td>Substance (Treaty)</td>
<td>September 2015</td>
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<td>7</td>
<td>Prevent the artificial avoidance of PE status</td>
<td>Substance (PE)</td>
<td>September 2015</td>
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<td>8</td>
<td>Assure that transfer pricing outcomes are in line with value creation: intangibles</td>
<td>Substance (TP)</td>
<td>September 2015</td>
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<tr>
<td>9</td>
<td>Assure that transfer pricing outcomes are in line with value creation: risks and capital</td>
<td>Substance (TP)</td>
<td>September 2015</td>
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<td>10</td>
<td>Assure that transfer pricing outcomes are in line with value creation: other high-risk transactions</td>
<td>Substance (TP)</td>
<td>September 2015</td>
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<td>11</td>
<td>Establish methodologies to collect and analyse data on BEPS and the actions to address it</td>
<td>Transparency (Data collection)</td>
<td>September 2015</td>
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<td>12</td>
<td>Require taxpayers to disclose their aggressive tax planning arrangements</td>
<td>Transparency (Schemes)</td>
<td>September 2015</td>
</tr>
<tr>
<td>13</td>
<td>Re-examine transfer pricing documentation</td>
<td>Transparency (Documentation)</td>
<td>September 2015</td>
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<tr>
<td>14</td>
<td>Make dispute resolution mechanisms more effective</td>
<td>Transparency (Disputes)</td>
<td>September 2015</td>
</tr>
<tr>
<td>15</td>
<td>Develop a multilateral instrument</td>
<td>Multilateral instrument</td>
<td>December 2015</td>
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</tbody>
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Challenges in the digital economy
Challenges in the digital economy
Challenges in the digital economy

Definition - Digital economy
The result of a transformative process brought by information and communication technology, which has made technologies cheaper, more powerful, and widely standardises, improving business processes and bolstering innovation across all sectors of the economy.


Digital economy refers to an economy that is based on digital computing technologies. The digital economy is also sometimes called the Internet Economy, the New Economy, or Web Economy. Increasingly, the "digital economy" is intertwined with the traditional economy making a clear delineation harder.

(Source: https://en.wikipedia.org/wiki/Digital_economy)

An Economy which functions primarily by means of digital technology, especially electronic transactions made using the internet.

(Source: https://en.oxforddictionaries.com/definition/digital_economy)
Challenges in the digital economy
Challenges in the digital economy

Features - Digital economy

- No boundaries
- No physical presence / Can contact anywhere
- Mobility

Intangible

Users and customers

Business functions
Challenges in the digital economy

Changes – Digital economy

- Development of new products and services
- Change business model
- Change way in which products and services are produced and delivered
- Create new payment mechanism and new form of digital currency
Challenges in the digital economy

Government policy supporting digital economy

National e-Payment Master Plan
Challenges in the digital economy

- Definition of permanent establishment (PE)
- A “preparatory or auxiliary” character as a list of exceptions to the definition of PE

- Concept of significant economic presence
  - Revenue-based factor
  - Digital factor
  - User-based factor

- Introduction of an “equalisation levy”
**Challenges in the digital economy**

**OECD – “BEPS” (Base Erosion and Profit Shifting)**

- VAT collection on cross-border transactions, especially those between businesses and consumers
- Who is payer on certain types of digital transactions for purpose of withholding tax?
Challenges in the digital economy

Challenge by the Revenue Department

- Income tax
  - Section 70
  - Section 76 bis

- Value added tax
  - Sale of goods
  - Provision of service
  - Import of goods or services

Taxing right?
Challenges in the digital economy

Challenge by the Revenue Department

- Withholding tax
  Who is liable to remit WHT to the Revenue Department?

- Reverse charge VAT
  Who is liable to remit reverse charge VAT to the Revenue Department?
Legal perspective for online transactions
**Agenda**

1. Related laws
2. Current online businesses & transactions from legal perspective
3. Rights over data
4. Active legal online transactions
5. Legal action for cyber bullying
Related laws

- Money Exchange Control Act, B.E. 2485
- Commercial Registration Act, B.E. 2499 - e-commerce license
- Anti Money Laundering Act, B.E. 2542
- Electronic Transactions Act B.E 2544
- Revenue Code – Order No. Por 121/2545 regarding e-Invoice, e-receipt
- Direct Sale and Direct Marketing Act, B.E. 2545 – Direct Marketing License
- Notice of Ministry of Finance (electronic money card business) B.E. 2547
- Computer Related Crime Act B.E. 2550
- Royal Decree on Electronics Payment Service Business Regulatory, B.E. 2551
- Personal Data Protection Bill
- Other specific licenses
## Related laws

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**หมายเหตุ:** ผ่านการพิจารณาแล้ว

**อุปสรรคการพิจารณา**

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**Update:** 16 September 2016

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[https://ictlawcenter.etda.or.th/de_laws](https://ictlawcenter.etda.or.th/de_laws)

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**Update:** 16 September 2016

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[https://ictlawcenter.etda.or.th/de_laws](https://ictlawcenter.etda.or.th/de_laws)
Current online businesses and transactions from legal perspective
Current online businesses & transactions from legal perspective

Buyer
- e-Wallet
- Debit / Credit
- e-money card

Online Market
- Exchange control
- E-Currency
- Offer / Acceptance
- Forming Contract
- Download
- Terms of Use
- Payment

Seller
- Tangible product
- Software/program
- THB
- CNY
- USD

Deliver

Enforcement and Jurisdiction

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3 Rights over data

Data

- Tangible sources
- Intellectual properties
- Personal data

Ownership
- By program
- By human
- Copyright
- Trade secret
- Personal Data Protection Act
- Right to be forgotten
- Raw data
- Information
- Personal opinion

Others

Personal opinion

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Active legal online transactions

E-filing

- Department of Business Development (DBD)
- Board of Investment of Thailand (BOI)
- Revenue Department (RD)
- Department of Intellectual Property (DIP)
- Customs Department (Customs)
- Anti-Money Laundering Office (AMLO)
- Investor Club Association (IC)
- Court of justice (e-Court)
Active legal online transactions

Equity-based Crowdfunding (“ECF”)

Issuers (Co., Ltd.)

Escrow Agent

Funding Portal

Investors

Funds

Reviews

Campaign

Shares

Funds

Return of Funds

Verify

Subscribing
### NCPO’s Announcement No. 74/2557 24 June 2014

<table>
<thead>
<tr>
<th>Meeting objective</th>
<th>DBD’s Order No. 13 (23 September 2016) and its explanation</th>
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<tbody>
<tr>
<td>Board of Directors’ meeting</td>
<td>Expanded to shareholders’ meeting</td>
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<tr>
<td><strong>Invitation Method</strong></td>
<td>Chairman to call meeting</td>
</tr>
<tr>
<td>Electronic</td>
<td>Normal invitation process (Newspaper and EMS or Email)</td>
</tr>
<tr>
<td><strong>Quorum</strong></td>
<td>1/3 of quorum needs to be in the same place</td>
</tr>
<tr>
<td>Identified themselves before meeting</td>
<td>All attendees must be in Thailand</td>
</tr>
<tr>
<td><strong>Record</strong></td>
<td>Follow security &amp; safety standard includes Meeting control systems* by MICT</td>
</tr>
<tr>
<td>Electronic invitation</td>
<td>Public company needs to stipulate meeting by teleconference in the AOA.</td>
</tr>
<tr>
<td>VDO or voice</td>
<td></td>
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<tr>
<td>Hard copy minutes</td>
<td></td>
</tr>
<tr>
<td><strong>Restriction</strong></td>
<td>Top national secret or as determined by Cabinet</td>
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</tbody>
</table>

*Teleconference via electronic media* means any meetings required or as determined by the Cabinet and law to be held via electronic media.

**Meeting control systems** must consist of basic equipment that enables participants to communicate with one another by voice and/or video, e.g. telephone, computer, TV camera, microphone, fax.
Legal action on cyber bullying

- Post
- Comment
- Like/Share

Mr. A Posted a photo

- Personal consequences
  - Depression
  - Suicide

- Retaliation

- Legal action
  - Tort
  - Defamation
  - Suicide provocation
  - Computer Related Crime Act

- Crime

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Developments in TP documentation requirements
What is BEPS addressing?

Coherence
- Hybrid Mismatch Arrangements (2)
- CFC Rules (3)
- Interest Deductions (4)
- Harmful Tax Practices (5)

Substance
- Preventing Tax Treaty Abuse (6)
- Avoidance of PE Status (7)
- TP Aspects of Intangibles (8)
- TP/Risk and Capital (9)
- TP/High Risk Transactions (10)

Transparency
- Methodologies and Data Analysis (11)
- Disclosure Rules (12)
- TP Documentation (13)
- Dispute Resolution (14)

Digital Economy (1)

Multilateral Instrument (15)
OECD approved the 2010 revised Transfer Pricing Guidelines. TP documentation was guided under Chapter V of the Guidelines.

September 2013
G20 Finance Ministers and the G20 Leaders endorsed the BEPS Action Plan.

5 October 2015
OECD issued Final Reports on Action 13.

Currently
OCED and G20 member countries have begun introducing the new legislations aligned with Action 13.
Countries which have introduced new legislation

- Australia
- New Zealand
- Japan
- Mexico
- Austria
- Estonia
- Poland
- United Kingdom
- France
- Netherlands
- Poland
- Spain
- United Kingdom
- South Africa
- China
- India
- Singapore
- Australia
- New Zealand
Transfer pricing documentation developments

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1979
OECD introduced “Transfer pricing guidelines for multinational enterprises (1979)”.

22 July 2010
OECD approved the 2010 revised Transfer Pricing Guidelines. TP documentation was guided under Chapter V of the Guidelines.

September 2013
G20 Finance Ministers and the G20 Leaders endorsed the BEPS Action Plan.

5 October 2015
OECD issued Final Reports on Action 13.

Currently
OECD and G20 member countries have begun introducing the new legislations aligned with Action 13.

16 May 2002
Thai Revenue Department issued transfer pricing guidelines (D.I. Paw 113/2545), and transfer pricing documentation requirements.

7 May 2015
Cabinet approved draft Thai transfer pricing legislation.

Soon
State Council approved draft Thai transfer pricing legislation.

Soon
National Legislative Assembly to approve draft Thai transfer pricing legislation.

Soon
Thai transfer pricing legislation to be published in Royal Thai Government Gazette.

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New transfer pricing landscape

Local level: draft transfer pricing provisions
OECD guidance on intra-group services
**OECD requirements**

- OECD Tax Model Convention, Article 9:
  - Principle of dealing at arm’s length

- OECD Guidelines, Chapter VII - Intra-Group Services:
  - Benefits for service recipients
  - Arm’s length charge

- OECD BEPS Action Plan, final draft released on 5 October 2015 on proposed revisions to Chapter VII related to low value-adding intra-group services
OECD BEPS guidance

• Objective
  To achieve the balance between appropriate charges for low value-added services and the need to protect the tax base of payer countries

• Elective, simplified approach
  ✓ Specifies a wide category of common intra-group services fees which require a very limited profit mark-up on costs (5% mark up)
  ✓ Applies a consistent allocation key for all recipients
  ✓ Provides transparency through specific reporting requirements including documentation showing the determination of the specific cost pool
# OECD BEPS guidance - Intercompany services list

<table>
<thead>
<tr>
<th>Low value –adding services (back office services)</th>
<th>Higher value services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounting</td>
<td>R&amp;D</td>
</tr>
<tr>
<td>Processing and managing of accounts receivable, payable</td>
<td>Sales and marketing</td>
</tr>
<tr>
<td>Information technology</td>
<td>Manufacturing and production services</td>
</tr>
<tr>
<td>Activities related to health, safety and environmental activities</td>
<td>Extraction, exploration or processing of natural resources</td>
</tr>
<tr>
<td>General administrative services</td>
<td>Insurance and re-insurance activities</td>
</tr>
<tr>
<td>Human resources</td>
<td>Financial transaction</td>
</tr>
<tr>
<td>Legal and tax</td>
<td>Procurement of raw materials, other materials for production process</td>
</tr>
<tr>
<td>Public relations support activities</td>
<td>Service of corporate senior management</td>
</tr>
</tbody>
</table>
### OECD BEPS guidance – Simplified benefit test

- Service must provide benefits as general rule
- Documentation and reporting package prepared following OECD guidance are sufficient as evidence for the benefit test
- Documentation and reporting package consists of:

| Description of the categories of low value-adding services provided including | 2. Written contracts or agreements |
| - the reasons justifying the low value-adding nature of the services | |
| - the rationale for the provision of services within the MNE group | 3. Calculation showing the determination of the cost pool |
| - the description of the (expected) benefits for each category of services | |
| - the selected allocation key(s) and the reasons for justifying that the selected allocation key(s) best reflects the benefit received | 4. Calculation showing the application of the specified allocation keys and a single annual invoice describing the category of services charged |
| - confirmation of the level of mark-up applied | |
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Thank you