

DRAFT TRANSFER-PRICING LAW APPROVED BY CABINET



On 3 January 2018, the Cabinet approved a draft transfer-pricing law which has been considered and commented on by the Council of State, and passed in a public hearing held by the Revenue Department. However, the draft transfer-pricing law is not yet in effect, but must still be submitted to the National Legislative Assembly for the legislative process.

The key points of the draft are as follows:

1. The Revenue Department's tax auditors will be granted the authority to adjust corporate taxpayers' revenue and expenses in relation to related-party transactions that were not at arm's length.
2. To relieve the double tax resulting from such adjustments, taxpayers who are deemed to have overpaid taxes on related-party transactions as a result of a transfer-pricing assessment will have the right to file a tax refund claim within 60 days of receiving notification of the tax assessment results or 3 years of the deadline for filing an annual corporate income tax return, whichever is later (although it is unclear how the Revenue Department will apply this in practice).
3. The term "related party" is defined as: (a) a legal entity that either directly or indirectly holds 50% or more of the total shares of another legal entity; (b) a legal entity of which 50% or more of its total shares are held either directly or indirectly by a shareholder or partner that also directly or indirectly holds 50% or more of total shares of another legal entity; or (c) a legal entity that has a dependent relationship with another legal entity in terms of capital, management, or control, to the extent that one entity cannot be operated independently from the other.
4. Taxpayers who are deemed to be related parties under the definition and have annual turnover exceeding the threshold to be set in a ministerial regulation (which cannot be lower than 30 million baht) will be required to prepare and file a transfer-pricing disclosure form together with its annual corporate income tax return within 150 days of the last date of the accounting period. This form requires taxpayers to disclose the names of their related parties; descriptions of such relationships in terms of ownership, management, or control; the total value of related-party transactions; and other information which may be prescribed in a notification issued by the Director-General of the Revenue Department.
5. The Revenue Department's tax auditors will be granted the authority to request full transfer-pricing information and supporting documents from taxpayers within 5 years of the date that this transfer-pricing disclosure form is filed to use in their transfer pricing analysis and adjustment. Taxpayers must submit such information and documents within 60 days of receiving notice to do so from the tax auditors.

6. Taxpayers who fail to submit the transfer- pricing disclosure form or transfer-pricing information and supporting documents by the due date will be subject to a fine of 200,000 baht.

Even though the draft is initially set to be applicable for accounting periods beginning on or after 1 January 2017, the National Legislative Assembly is not expected to pass the draft law by the deadline for filing the annual corporate tax return for the 2017 tax year. Therefore, the Cabinet has asked the Ministry of Finance to coordinate with the Council of State in order to postpone the effective date of the draft.

How can Mazars Thailand help your business?

Mazars is an integrated international partnership of independent professional service firms, and our tax team is supported by transfer-pricing professionals from Mazars' international member firms around the world, helping us look beyond borders and understand the nuances of different national regulations. If your business has significant related-party transactions, our tax team professionals can work with you on minimizing your transfer-pricing risk, building up your transfer-pricing compliance process, and delivering integrated, efficient, and value-driven local and global transfer-pricing services.

Our transfer-pricing professionals provide services in the following areas:

- Preparation of effective transfer-pricing documentation for a strong, first-line defence against tax authority challenges;
- Performing benchmark studies supporting or defending the transfer-pricing policies implemented;
- Assistance in the preparation or review of cross-border contracts to ensure a tax effective strategy and minimization of risks; and
- Assistance with responding to a tax investigation in regard to transfer-pricing issues, including providing strategic advice, drafting clarification letters, and meeting with the tax auditors.

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