

Thailand's New Transfer Pricing Law Enacted

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On 21 November 2018, the Revenue Code Amendment Act (No. 47) B.E. 2561 was published in the Royal Thai Government Gazette, amending the Thai Revenue Code (**Revenue Code**) by adding specific provisions regarding transfer pricing (**Transfer Pricing Provisions**). The Transfer Pricing Provisions will apply to revenue and expense recognition of associated enterprises for accounting periods starting on or after 1 January 2019.

The Transfer Pricing Provisions aim to align Thai laws regarding taxation of associated enterprises with international guidelines and standards, and prevent profit shifting and tax avoidance by large multinational enterprises which affect the Thai Government's collection of taxes.

Key features of the Transfer Pricing Provisions include:

1. **Associated Enterprises:** The Transfer Pricing Provisions define “associated enterprises” as one or more companies or juristic partnership whose relationship with each other meets any of the following criteria:
 - (i) One company or juristic partnership that directly or indirectly holds at least 50% of the entire capital in another company or juristic partnership;
 - (ii) Shareholders or partners holding directly or indirectly at least 50% of the entire capital of one company or juristic partnership that are also shareholders or partners holding directly or indirectly at least 50% of the entire capital of another; or
 - (iii) One company or juristic partnership which has capital or management power or has control over another under certain conditions specified by the Ministerial Regulations. We note that in this third scenario it appears that the associated enterprise will be determined based on a factual rather than legal relationship.
2. **Transfer Pricing Adjustment:** Section 71 bis of the Revenue Code grants the assessment officer power to make adjustment to an enterprise's revenues or expenses for corporate income tax calculation if the assessment officer reasonably believes that the act of profit shifting has occurred in transactions undertaken between associated enterprises. The transfer pricing adjustment can be made for corporate income tax calculation, withholding tax returns filed for offshore payments and withholding tax returns filed for profit distribution.

Key features of the Transfer Pricing Provisions include (continued):

3. **Tax Refund:** The adjustment made by the assessment officer to one associated enterprise may result in tax over-payment by another associated enterprise. If this occurs, such affected associated enterprise is entitled to claim a tax refund from the Revenue Department within 3 years from the tax return filing date deadline or within 60 days from the date of receiving the written transfer pricing adjustment notice from the assessment officer under Section 71 bis of the Revenue Code.
4. **Transfer Pricing Documentation:** Section 71 ter of the Revenue Code introduces requirements for taxpayers with annual revenue of more than 200 million baht to file transfer pricing documentation (including a transfer pricing disclosure form) with its corporate tax return regarding the relationship between associated enterprises and transactions conducted within the group of associated enterprises. We expect that the transfer pricing disclosure form to soon be prescribed by the Director-General of the Revenue Department. The first filing year of the transfer pricing documentation will be 2020 for the taxable year ending 31 December 2019.
5. **Penalty:** Under section 35 ter of the Revenue Code, any taxpayer who fails to submit the transfer pricing documentation or who submits the transfer pricing documentation with incorrect information without reasonable grounds will be liable to pay a fine of not more than Baht 200,000.

Need assistance?

Siam Premier's Taxation team provides strategic tax advice on all aspects of Thai taxation law.

For further information on the Transfer Pricing Provisions and how it may affect your business, please contact us on Tel: +66 2 646 1888 or Email: praphan@siampremier.com

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