Tax News

Thai National Legislation Assembly endorses Transfer Pricing Law

Following the public hearing in mid-2017 and final approval by the Thai Cabinet on January 2018, Thailand's draft transfer pricing law sailed through the final reading session of the National Legislation Assembly on 27 September 2018. The law intends to create transparency, reduce profit shifting between related entities, and prevent double taxation issues in transfer pricing between related companies or enterprises.

Prior, tax authorities and taxpayers alike relied on the old warhorse Departmental Instruction (No. Paw 113/2545) as an interpretive guideline for their transfer pricing practices.

It is believed the new transfer pricing law will provide regulatory clarity over Thailand's transfer pricing regime.

Key Features of the Approved Transfer Pricing Law

a)   Section 71 bis empowers the Revenue Officer to adjust revenue and expenses of a company if the commercial and financial conditions for the transactions between the "related parties" are not determined according to the arm's length principle.

b)   "Related parties" means a company that directly or indirectly holds no less than a 50% stake in another company; or a company that directly or indirectly holds no less than a 50% stake in one company that, in turn, directly or indirectly holds no less than a 50% stake in another company; or a company that has relationships in terms of capital, management or control in another company rendering the other company unable operate independently.

c)   Section 71 ter requires the company under Section 71 bis with the total revenue over Baht 200 million in a financial year to submit reports on transfer pricing (presumably in the prescribed form) within 150 days from the last day of the financial year.

d) Within five years after the submission of the report on transfer pricing information, the Revenue Officers may notify the company to submit necessary documents or evidence in relation to its transfer pricing practices (including the Transfer Pricing Documentation Report) within 60 days. If necessary, the submission period may be extended (but not beyond 120 days from the receipt of the notification.) First-time recipients can apply for an extension of the submission period of 180 days after the receipt of the notification.

e) Failure to submit transfer pricing documentation or where one submits incorrect information without justification is punishable by a maximum penalty of Baht 200,000.

Author's Note

Generally laws passed by the Parliament come into force after being signed by the King and published in the Royal Gazette – a process requiring about one month or so. The new transfer pricing law will be applicable from 1 January 2019 onwards. Hence, companies with their financial year ending on 31 December 2019 must submit information about their transfer pricing practices (presumably in the prescribed form) with their annual tax returns at the end of May 2020.

As such, taxpayers with related party transactions have about one year to prepare for a transfer pricing risk assessment and to identify sensible measures to control risk or contain possible damage.

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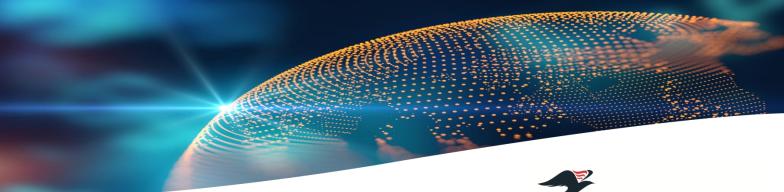**Supanich Taweesuksirianan**
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