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CHANDLER MHM

Newsletter

THAI REVENUE DEPARTMENT ISSUES NEW REGULATIONS ON TRANSFER PRICING

Transfer pricing guidelines were initially introduced by the Thai Revenue Department in 2002. Those guidelines suggested that related-party transactions adopt the OECD's "Arms-Length Principle" (i.e., transfer pricing for internal, related party transactions must be similar to transactions with unrelated companies). However, the guidelines were not binding on Thai companies at the time. In 2019, amendments to the Revenue Code (with regulations included under Revenue Code Section 71 bis) made disclosures of related party transactions binding, requiring companies with revenues over Thai Baht 200 million to report such transactions to the Revenue Department along with their annual taxes.

To bolster transfer pricing regulations and to provide clarification on transfer pricing requirements, two Ministerial Regulations Nos. 369 and 370 were published in the Government Gazette on 16 November 2020. The changes under the Ministerial Regulations are important for companies/ group companies whose operations involve related-party transactions between group company members.

General applicability of transfer pricing regulations

Transfer pricing regulations in Thailand allow the Revenue Department to scrutinize related-party transactions between companies or partnerships. The Revenue Department may adjust the income and expenses of a company/ partnership engaged in related transactions. Related transactions are those involving: (i) related parties (defined as companies/ partnerships directly or indirectly holding not less than 50% of the total shares in another company/ partnership and/ or a company/ partnership that has a relationship with another company/ partnership that includes investment, management or control); (ii) transactions with commercial or financial terms that are different from transactions with third-parties; and (iii) there is reason to believe that the transaction was for the purpose of profit-shifting/ tax avoidance.

Details of Ministerial Regulation No. 369

<u>Definition of "Commercial and Financial Terms"</u>

The Ministerial Regulation No. 369 provides a definition for "Commercial and Financial Terms," under Section 71 bis of the Revenue Code. This defines "Commercial and Financial Terms" as terms, agreements or contracts relating to the sale of goods, services, marketing, advertising, other commercial activities, loans, financial support, financial collaboration, or other financial activities, regardless of whether or not such transactions are made in writing.

<u>Clarification to types of remuneration</u>

The Ministerial Regulations No. 369 further states that transfer pricing regulations apply to any Commercial and Financial Terms which are undertaken independently in a manner to believe that profit has been transferred between the companies having a relationship with each other via various types of remuneration. Remuneration includes the price of goods or service fees, including conditions and methods for payment, interest, financial service fees which the companies receive or pay, other income, other expenses compared with transactions with independent/ unrelated companies under the same circumstances.

<u>Adjustments to revenue / expenses</u>

Tax assessment officials have the power to adjust revenues and expenses of companies in order to calculate taxable net profit if an official find that transfer pricing occurred using the following methods:

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(i) On an arm's length transaction basis by using information about revenue and expenses from transactions undertaken with related companies. This is achieved by comparing the amount of revenue or expenses actually paid or received to the amount that would be payable or receivable if the same transaction was between a third-party, unrelated company in the ordinary course of business; and

(ii) On an external comparable value basis by using the information from the same transaction undertaken between other companies. This applies no matter whether the transaction is undertaken domestically or overseas or conducted by companies incorporated under Thai or foreign laws. This would determine the amount of revenue or expenses that the companies should duly receive or pay if there had not been a transaction undertaken between related companies.

More details to determine the adjustment of revenue and expenses will be prescribed by additional notifications to be announced by the Director General of the Revenue Department.

Revenues and expenses adjusted by the assessment official will be used to calculate taxable net profit under Section 65 of the Revenue Code, or assessable taxable income which is paid in Thailand to a company incorporated overseas and not carrying out business activities in Thailand under Section 70 of the Revenue Code, or profits or any other sums set aside out of profits, or which may be regarded as profits under Section 70 bis of the Revenue Code.

Details of Ministerial Regulation No. 370

Ministerial Regulation No. 370 confirms that transfer pricing disclosures only apply to the related companies or partnerships that generate revenues of not less than Thai Baht 200 million in each accounting period. Related parties that do not reach this Thai Baht 200 million threshold are exempt from disclosing related party transactions for assessment of transfer pricing by the Revenue Department.

Conclusion

Ministerial Regulations Nos. 369 and 370 do not provide details for determining how comparable transactions or comparable methods will be assessed. However, the addition of the definition of Commercial and Financial Terms clarifying the types of remuneration under Ministerial Regulation No. 369, and the confirmation of revenue thresholds under Ministerial Regulations No. 370 are positive steps forward to establishing clearer transfer pricing regulations in Thailand.

If you would like to discuss the issues raised in this article further or related issues, please contact the authors listed in the right hand column.