
Cabinet Endorses Draft Transfer Pricing Law

January 2018

It is becoming real. Prudence, not haste, is warranted. But, tardiness is not an option.

On 3 January 2018 Cabinet endorsed the draft transfer pricing law. Key issues in the draft are summarised as follows:

1. Taxpayers and Their Duties

- a) Related companies are required to submit reports about the relationships between companies and the number of the related party transactions during the given accounting period. The transfer pricing forms must be submitted to the Revenue Officers within the period specified by the Director-General. [Section 71 ter, Paragraph 1]
- b) Failure to submit the required documents and evidence, or their incomplete or incorrect submission without justifiable cause, will constitute a criminal penalty punishable by a fine exceeding Baht 200,000. [Section 35 ter]
- c) Companies with related party transactions and total revenues during the given accounting period that are less than the minimum income threshold are exempt from filing transfer pricing forms. The threshold will be announced by Ministerial Regulation, but must not exceed Baht 30 million. [Section 71 ter Paragraph 1]

2. Power of the Revenue Department

- a) Revenue Officers are empowered to assess revenue or expenses to the levels that the companies should earn or expend in the case that their contracting parties were independent companies. Such tax assessments must take into account the elimination of double taxation. [Section 71 bis Paragraph 1]
- b) Within five years after submission of the transfer pricing form, Revenue Officers may notify the companies to submit documents or evidence necessary to analyze transfer prices of their related party transactions. Companies have 60 days to submit such documents/evidence. The submission period can be extended, but must not exceed 120 days from the notification date by the Revenue Department. [Section 71 ter Paragraph 2]

3. Next Steps

- a) The Office of the Council of State proposed that the new transfer pricing law will apply to the accounting period beginning 1 January 2017 in order that filings to the Revenue Department will commence from 31 May 2018. However, Cabinet concluded that the transfer pricing law should not have retroactive effect. Thus, Cabinet has assigned the Ministry of Finance and the Office of the Council of State to reconsider a new effective date.
- b) The draft transfer pricing law must be submitted to the National Legislation Assembly (NLA) for consideration and enactment.

Present Timeline for the Draft Transfer Pricing Law

Date	Actions
7 May 2015	Cabinet approved, in principle, a draft transfer pricing law as proposed by the Ministry of Finance, and then forwarded the draft for a review by the Office of the Council of State.
20 June – 7 July 2017	Revenue Department held a public hearing for the revised draft transfer pricing law.
31 October – 13 November 2017	Revenue Department analysed the impact of the transfer pricing law.
3 January 2018	Cabinet approved a draft transfer pricing law as proposed by the Office of the Council of State, and forwarded it to the National Legislation Assembly for consideration.

Author's Note:

i Compared to the two-year review by the Office of the Council of State, the five-month public hearing and analysis processes of the Revenue Department were swift. Impressively, Cabinet completed the approval process during the festive month of December. By this stage, it was predictable that this draft would be forwarded to the NLA. The legislative process at the NLA usually takes about a year. That being said, it would not be a surprise if enactment of this transfer pricing law came earlier.

The draft transfer pricing law determined the minimum income threshold at a mere Baht 30 million (USD 1.0 million) revenue per year. Hence, it is likely that not only will multinational enterprises with international dealings be required to submit transfer pricing reports, but a significant number of Thai corporates that have inter-company transactions with local related companies (no matter how tiny the transactions are) will also have to do so. If not, they will be subject to a fine of Baht 200,000.

With the current conditions, it is expected that the Revenue Department will be bombarded with transfer pricing reports every year. But, in light of these high volumes, Revenue Officers will have plenty of opportunities to identify transfer pricing audit targets.

Look before you leap – To prepare for the disclosure of information related to transfer pricing practices, it would be prudent for companies to review possible transfer pricing risks and, if necessary, map out a course of action to minimize such risks. The companies should review the characterisation of their businesses in light of the functional profile and industry circumstances, and subsequently validate the appropriateness of the transfer pricing methods compared to those of uncontrolled entities.

**By Mr. Phongnarin Ratanarangsikul, Transfer Pricing Specialist Dherakupt International Law Office Ltd.*

Note: Dherakupt International Law Office Ltd., has changed its name from DRK to DRKI. E-mail and website domains are @drkilaw.com (e.g. Monchai_v@drkilaw.com) and www.drkilaw.com.