
Draft Ministerial Regulations on Transfer Pricing

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The Revenue Department recently disclosed draft Ministerial Regulations, Nos. xxxx and yyyy, under the Revenue Code. Both laws designate calculations of revenue and expenses of related juristic companies and provide certain exemptions under Section 71 ter of the Revenue Code.

Ministerial Regulation No. xxxx,

The Ministry of Finance reveals that the draft will provide rules, procedures and conditions to assess inter-company dealings between related juristic persons. The draft also empowers Revenue Officers to adjust revenue and expenses where related parties (under assessment) transact according to financial or commercial terms that differ from those of otherwise independent companies.

New Law an Endorsement of Paw 113/2545?

Although the rules, procedures and conditions are yet to be confirmed, it is anticipated they will correspond with Departmental Instruction No. Paw 113/2545. This DI defines "market price" and the means for its determination consistent with the Organization for Economic Co-operation and Development's (OECD)'s "arm's length principle." The DI is expected to become officially binding in order for Thailand to comply with the global standards. The DI recommends the following methods to determine transfer prices:

- Comparable Uncontrolled Price Method (CUP)
- Resale Price Method (RP)
- Cost Plus Method (CP)

Although differing in procedure, these methods essentially use transaction prices between independent companies as the baseline for determining transfer prices. For cases where these methods are inapplicable, the DI suggests that other methods, especially the traditional profit methods, be used. Traditional profit methods involve comparing profit levels derived from related company transactions to those of independent companies with similar operations. Such internationally accepted methods include:

- Profit Split Method
- Transactional Net Margin Method

To wrap things up, the substance of this draft Ministerial Regulations is nothing out of the ordinary. They do, however, confirm several crucial points in the previously enacted Amendment of the Revenue Code (No. 47). In the author's opinion, it is still fairly safe to assume that DI No. Paw. 113/2545 will still be applicable in the future when considering

international transfer pricing standards. However, still to be clarified are some details about the form under which the information is to be reported to the Revenue Department

Related Development: Draft of Ministerial Regulation no. yyyy

According to Section 71 ter of the Revenue Code, a Ministerial Regulation must be issued to set the maximum amount of total revenue of juristic company or partnership that are not required for submission of transfer pricing information but such amount must not less than Baht 200 million per year.

This draft issued by the Ministry indicates that a juristic company or partnership, whose total revenue in any accounting period does not exceed Baht 200 million need not report related legal entities and inter-company transactions, as is otherwise required under Section 71 ter.

It is believed the Ministry set the bar at 200 Million as the authority considers penalties normally imposed under Section 35 ter as too harsh for smaller entities. These smaller companies are expected to benefit under this new law.

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