

## Disclosure Form

May 2022

The Revenue Department is ramping up supervision of taxpayers by notifying those who have failed to submit transfer pricing disclosure forms, a filing required under Section 71 ter of the Revenue Code. This heated pursuit could be a precursor to more invasive action by the tax authority, such as investigations and audits.

Entities engaging in related party transactions, according to Section 71 ter, must submit to the Revenue Department a disclosure form that details relationships between related entities and the value of intercompany transactions during the accounting year. The disclosure form must accompany the annual corporate tax return.

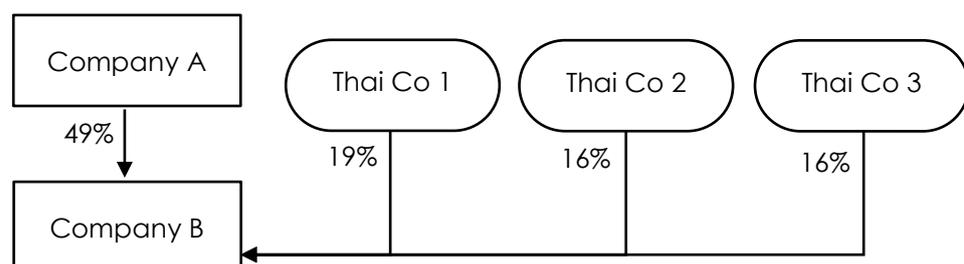
Revenue Officers are targeting taxpayers whose annual revenue in FY2020 amounted to Baht 200 million or more and have common shareholders with other Thai companies. A company, as defined by Section 71 bis paragraph 2 (2), has a related company if a "shareholder," directly or indirectly holding at least 50% of the total capital in that company, also directly or indirectly holds at least 50% of the total capital in another company.

Taxpayers and their advisors, however, must exercise caution when interpreting "shareholder" in the context of the Thai Revenue Code. "Shareholder" imputes both the singular and plural in the Thai language, and is undefined in the Revenue Code. Further, while most taxpayers interpret the word "shareholder" as singular, Revenue Officers, based on recent letters to taxpayers, interpret "shareholder" as a juristic person, a natural person, or a group of juristic and/or natural persons.

Two interesting cases portray how Revenue Officers select their audit targets in pursuit of compliant transfer pricing.

### Case 1:

Company A of Japan, a parent, holds a 49% capital stake in Company B in Thailand, while three affiliated companies (Thai Co 1, 2, and 3) of a Japanese bank hold a combined stake of 51% of the remaining capital. Revenue Officers found that Thai Co 1, 2, and 3 also hold a combined stake of not less than 50% in several companies in Thailand. So, Company B is required to submit a disclosure form for FY2020.



## Case 2:

A Revenue Officer identified that Company P of Japan holds shares in two Thai companies, i.e., 35% of the total capital in Company A and 3% of the total capital in Company B. On the other hand, Company Q of Japan holds 90% in Company B and 10% in Company A. The Revenue Officer also found that three individuals (Mr. X, Mr. Y, and Ms. Z) hold shares in Company A and Company B.

As the same group of juristic and natural persons holds at least 50% of the total capital in Company A and Company B, the Revenue Officer determined the two companies are related and, hence, notified them to submit their disclosure forms.

Shareholders	Company A	Company B
1) Company P	35.0%	8.0%
2) Company Q	10.0%	90.0%
3) Mr. X	0.5%	0.1%
4) Mr. Y	0.5%	0.1%
5) Ms. Z	10.0%	0.1%
6) Other shareholders	44.0%	1.7%
<b>Combined stakes of common shareholders</b>	<b>56.0%</b>	<b>98.3%</b>

As the above taxpayers failed to submit their disclosure forms, they are subject to a maximum penalty of Baht 200,000, according to Section 35 ter. The penalty will be reduced to Baht 100,000 if these taxpayers submit the disclosure form in accordance with the Revenue Department's notification letters.

A Ministerial Regulation, dated 25 March 2022, extended disclosure form submission deadlines for FY2020 for an additional 12 months. Hence, these taxpayers may not be subject to any penalties if they submit their FY2020 disclosure forms within 30 May of this year.

## How to Respond?

In Case 1, Company B is by no means related to the several Thai companies listed by the Revenue Officer, but would be related to Company A under Section 71 bis paragraph 2 (3). By this third definition, authorities would deem Company A as related to Company B in terms of capital, management, or control in the way that such a company is unable to operate independently from the other company. Details of this third definition would be prescribed by way of Ministerial Regulation but have yet to be enacted. As Section 71 bis paragraph 2 (3) is unenforceable as of this writing, Company B should not be required to submit a disclosure form. Company B should respond by submitting an explanation letter with supporting evidence to the Revenue Department.

In Case 2, if Company A is not related to Company B, but it is actually related to Company P under Section 71 bis paragraph 2 (3). Company A should respond to the Revenue Department in the same way as the taxpayer in Case 1.

In the event that Company A is actually related to Company B as claimed by the Revenue Officer, Company B should submit its disclosure form for FY2020 within 30 May 2022 to avoid a penalty of Baht 100,000.

## Author's Note



Following the enactment of the specific provisions on transfer pricing in 2019, the Revenue Department spent considerable time in 2020 educating taxpayers on the new regulations. Tax authorities, this year, have elevated their supervision and audit activities by identifying taxpayers who failed to submit the disclosure forms, thus bringing them onto their radar. This development at the Revenue Department could be a build-up to tax investigations and audits.

The Revenue Department can exercise its discretion in grouping a company's shareholders to create a nexus to an unknown company or set of companies to fit the definition of "related company." Its broad interpretation of "shareholder" shows trends in such a direction. Where taxpayers are under such scrutiny, they must review their holdings and relationships in order to provide the Revenue Department with a written explanation in their best interests, along with supporting evidence.

Revenue Officers, despite the targeted taxpayer's clarifications, could still continue investigating the entity's transfer pricing practices. In such case, taxpayers should prepare supporting evidence that transfer prices determined for their actual related companies accord with the arm's length principle and comply with Section 71 bis of the Revenue Code.

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