

TP Alert 转让定价快讯

January 2018

2018 年 1 月

Thai Government Cabinet approves revised draft Transfer Pricing law

泰国内阁批准经修改的转让定价法律草案

The Cabinet approved a revised draft of the transfer pricing law aimed at preventing abusive transfer pricing between related companies or partnerships on 3 January 2018. This revised draft follows the public hearing process conducted by the Thai Revenue Department ("TRD") in July 2017 (please refer to the specific comments on this below).

2018 年 1 月 3 日，泰国内阁批准了修改后的转让定价法律草案，意在防止滥用关联方之间的转让定价，而修改是基于 2017 年 7 月泰国税务局开始的公开听证程序而进行的。

Important objectives of the draft law are as follows: 法律草案的主要目的如下：

- To impose a penalty in the case where related entities fail to prepare or submit reports, documents, or evidence to the assessment officers within the specified time period or submit reports, documents, or evidence containing insufficient information without a reasonable justification;
当相关企业没有准备，或无法在规定时间内提交转让定价报告、文档或证据给税务评估官员，或在没有正当理由的遗漏/错误申报时，税务评估官员可以征收罚款；
- To enable the tax assessment officers with authority to adjust income and expenses for the purpose of corporate income tax calculations to arrive at the income and expenses as if the companies or partnerships had operated independently;
给予税务评估官员调整收入与费用的权利，从而使得企业所得税的计算公允；
- To regulate the related entities to prepare a report demonstrating the relationship amongst each other and the value of intercompany transactions in each accounting period, following the requirement of the Director-General of the TRD. The report must be submitted to the tax assessment officers, together with the tax return form within the specified time period;
在泰国税务局局长的指示下，规定相关企业准备报告以披露关联方交易明细。该报告必须在在规定时间内与企业所得税年度汇算清缴（PND 50）提交给税务评估官员；
- To enable the tax assessment officers, upon approval from the Director-General of the TRD, with authority to demand a company or juristic entity to submit documentation providing information needed for the analysis of intercompany transactions, following the Director-General's notification, within five years from the date the report was submitted;
使税务评估官员在获得税务局局长批准后，可以要求企业在转让定价报告提交 5 年内再提交相关明细文档以便对关联方交易做进一步的分析。
- To exclude companies or juristic entities with income in each accounting period, which is less than the amount specified by the Ministerial Regulation but must not be less than thirty million baht, from preparation of the report demonstrating the relationship

between each other and the value of intercompany transactions in each accounting period;

豁免在一个会计期间内收入不超过一定金额的企业申报关联方交易明细报告，该金额不低于 3000 万泰铢。

- With regard to the effective date of the transfer pricing law, the Ministry of Finance, together with the Council of State, will discuss further since the initial accounting period was indicated as starting on or after 1 January 2017, but this accounting period has now passed and the law should not have retroactive effect.

关于转让定价的生效日期，财务部会与国家议会进一步讨论。因为初始法律草案意在让会计期间始于 2017 年 1 月 1 日之后的企业进行申报，但该会计期间已经结束，通常法律不会追溯生效。

Once the effective start date for the law is determined, the draft transfer pricing law will be submitted to the National Legislation Assembly for law enactment.

一旦生效日期确定，法律草案会提交至国家立法会进行正式颁布。

The draft law is not available to the public at this time. 目前草案全文仍未向公众公布。

Thai Revenue Department's responses to results of public consultation on the draft Transfer Pricing law

税务局对法律草案公开听证的回复

After the TRD welcomed comments and suggestions on the draft transfer pricing law, the TRD published its summary of the public comments on the draft of the transfer pricing law, together with its comments, on the Revenue Department's website in late 2017. 税务局对评论及建议表示欢迎，并于 2017 年年底在网站上公布了部分公众评论以及官方回复。

After the commentary hearing period from 20 June 2017 to 7 July 2017, a total of 49 private organizations provided comments. Out of the total, 44 companies agreed that the law could promote clarity of tax assessment, eliminate transfer pricing dispute, prevent profit shifting from high tax rate country to lower tax rate country through the use of transfer prices, prevent double taxation, etc.

在2017年6月20日到7月7日这段收集期内，税务局总共收到49个私人组织给出的建议，其中有44家企业认同该法律可以使税务稽查更加透明，减少转让定价争议，防止利润从高税率国家向低税率国家转移并避免双重征税。

Key TRD clarifications on the public comments are summarized below. 税务局对公众建议的重要澄清如下：

- **Draft Section 71 bis, paragraph 1: Transfer pricing adjustment**
草案 71bis 第一段：转让定价调整

Where the tax assessment officers make adjustment to the income and expenses of related companies or partnerships according to draft Section 71 bis and both parties to the transaction are in Thailand, the adjustment to income and expenses of the parties would happen at the same time. However, it is important to note that the legislation does not allow taxpayers to perform self-adjustment as the law only authorizes the Revenue officers to do so.

当税务评估官员根据草案 71 bis 对关联企业的收入及费用进行调整时，如果交易双方均在泰国，收入及费用的调整应该在双方企业同时进行。但需要注意的是，法律并不允许纳税人自行调整，因为只有税务局官员有权进行纳税调整。

In addition to this primary adjustment, the TRD also confirmed that the draft transfer pricing law also covers secondary adjustment.

税务局同时确认除了转让定价调整，转让定价法律还会包含了其他税种的次要调整。

This transfer pricing adjustment will have no impact on VAT positions of the taxpayers.

转让定价调整将不会影响纳税人的增值税负担。

- **Draft Section 71 bis, paragraph 2: Definition of the “related entity”**

草案 71bis 第二段：关联方的定义

Several comments were made on the appropriateness of the use of shareholding percentage in determining whether the parties are considered related. The TRD clarified that shareholding percentage is one of the criteria for indicating relationship similar to that applied by other countries. However, the shareholding percentage is not the only criterion used by the TRD. The proposed draft law has room for adding other criteria which can be defined as appropriate. When considering relationship criteria, actual controlling power will also be considered; and it has to be generally accepted condition. Further guidance on how to consider the indirect shareholding ratios will be provided later.

收到的评论中，很多是关于采用股权比例这个方法判定关联方的合理性。税务局澄清说，与其他国家一样，股权比例只是其中一个判定条件，而并非唯一条件。法律草案有增加其他条件的空间，以加强关联方定义的合理性。在判定关联方时，实际控制权等其他被大众所接受的条件也将纳入考虑范围。关于间接控股的情况也将进一步出台更多解释。

- **Draft Section 71 bis, paragraph 3: Tax refund**

草案 71bis 第三段：税金返还

To address taxpayers’ concern on the extension prescription period for tax refund, the TRD clarified that the law, which specifically defines the period of 60 days, is for the benefit of taxpayers. Generally, the prescription period for tax refund is within 3 years from the tax return filing due date; but in this case, even if the normal refund period has passed, the taxpayer can still request a tax refund within 60 days from the date on which a written notification of transfer pricing adjustments by the tax assessment officers was received. This is basically a special extension of the tax refund period for taxpayers.

关于税金返还延长期的担心，税务局澄清称该延长期（60 天）是对纳税人权益的保护。通常，税金返还必须在税务申报日后 3 年内完成。但法律草案指明，尽管 3 年有效期已经结束，纳税人还是可以在收到税务评估专员转让定价调整书面通知后的 60 天内提交退税申请，因此，该延长是对纳税人的特别保护。

- **Draft Section 71 ter, paragraph 1: Annual transfer pricing disclosure**

草案 71ter 第一段：年度转让定价披露

The TRD commented that the information in the report to be submitted together with the tax return form, i.e. P.N.D. 50, is straightforward and should not pose any burden for taxpayers. The information to be included in the report is basic/general information that taxpayers must already have. This annual report will provide the Revenue Department with an important primary detail to assess the risk of tax evasion through transfer pricing.

税务局认为，需要和企业所得税年度汇算清缴（PND50）一起提交的转让定价报告并不复杂，是纳税人本来就应该有的资料，不会对纳税人造成额外负担。转让定价报告会是税务局重要的评估漏税的依据。

- **Draft Section 71 ter, paragraph 2: Transfer Pricing Documentation**
草案 71ter 第二段：转让定价文档

In general, the transfer pricing documentation should be prepared prior to, or at the time taxpayers are entering into related party transactions. This is in order to demonstrate that the transfer prices of the transactions are not different from what independent parties would agree.

通常，转让定价文档应该在纳税人有关联方交易时或之前准备，使得关联方之间的转让定价与独立第三方的定价无重大差异。

Nevertheless, to ease the taxpayers' burden in documentation preparation, taxpayers with revenue more than the minimum revenue threshold(s) as will be defined in the Ministerial Regulation are allowed to only have the documents and evidence for performing transfer pricing analysis gathered at the time of the transactions; and not yet in the full format as specified by the Director-General Notification. However, if the tax assessment officers request transfer pricing documentation, taxpayers will be given 60 days to prepare and deliver the documentation in the form to be announced by Director-General.

尽管如此，为了减轻纳税人负担，超过规定收入豁免额的纳税人在交易发生时，可以仅准备可供进行转让定价分析的信息和证据，而不需要准备全套文档。但在税务评估官员要求时，纳税人必须在收到通知的60天内提交全套转让定价文档。

Therefore, the TRD viewed that the 60-day submission period should be sufficient. 因此，税务局认为，60天的申报期是足够的。

- **Draft Section 35 ter: Penalty**
草案 35ter：罚金

In case where a taxpayer fails to submit the "reports", "documents", or "evidence" according to Section 71 ter or submit incomplete/incorrect "reports", "documents", or "evidence" without any justifiable reason, the taxpayer shall be subject to the fine of no more than 200,000 baht per time.

Such criminal fine is only in monetary form with the statutory limitation of one year. The fine applied to each case is not the same depending on the basis of the case. The fine will be appropriate to each case and will be defined in further detail like other criminal fines under other Sections of the Revenue Code.

当纳税人未根据71ter及时提交报告、文档或证据时,或在没有正当理由的遗漏/错误提交时,纳税人每次将被处不高于20万泰铢的罚金,法律有效期为一年。但税务局会根据不同的情况给予不同的罚款,具体情况会在将来做进一步说明,也将会根据税法典的其他条款进行额外的刑事处罚。

Similar to other countries, the TRD may consider reducing or exempting penalty for the taxpayers who have prepared and submitted the required information/document within the period specified by the law.

与其他国家相似，税务局会考虑对依法在规定时间内提交规定信息/文档的纳税人给予适当的罚金减免。

Deloitte's observations 德勤观点

Based on the draft law, more transfer pricing audits are expected as the TRD can assess transfer pricing risks through the annual report required to be submitted with the annual tax return. More importantly, in the case where transfer pricing adjustments take place due to transfer pricing non-compliance, taxpayers in Thailand would also be subject to the secondary adjustment. That is, in addition to the primary adjustment, the non-compliant taxpayer may be subject to withholding tax on deemed dividends or deemed loan as the case may be. Surcharges will also be applied on both adjustments.

根据法律草案，更多的转让定价检查将会进行，因为税务局可以根据与企业所得税年度汇算清缴同时提交的转让定价报告判断转让定价风险。更重要的是，当税务局以转让定价不合理为由，而做出纳税调整时，纳税人还可能会面临其他次要调整。也就是说，除了转让定价对所得税的调整，纳税人可能会被调整相关代扣税，如被认定为股利或利息的支出。同时，滞纳金也会一并计算。

To manage transfer pricing risks, taxpayers should ensure transfer pricing compliance. Taxpayers should review their transfer pricing practice on an annual basis. Well-prepared, contemporaneous transfer pricing documentation not only serves as an efficient tool in preparing an annual report to be submitted with the annual tax return, but it could also put taxpayers in the better position to defend with the Revenue officers if and when the transfer pricing audit takes place; hence, reducing potential exposures and penalties.

为了管控转让定价风险，纳税人应该确保遵守转让定价规定，并每年对企业转让定价情况进行自查。及时的、高质量的转让定价文档不仅是转让定价年度报告的高效工具，而且可以使纳税人在转让定价检查中处于更有利的位置，减少不必要的风险与罚款。

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