

Ministerial Regulations issued under the Transfer Pricing Laws

转让定价法令相关之部级法规

TP Alert 转让定价快讯

The Minister of Finance has issued two Ministerial Regulations (“MR”) under the Thai Revenue Code to provide rules and guidance on the application of certain aspects of the transfer pricing laws as follows: 财政部近期依据税法典(Thai Revenue Code)发布部级法规(MR)·针对转让定价法令(Transfer Pricing Laws, TP Laws)之部分规定提供指引:

- MR 369: Adjustments to income and expenses where profits have been transferred due to non-arm’s length commercial or financial arrangements between related parties. - MR 369: 针对关联方间因未按独立交易原则进行之商业或财务安排而造成之利润转移·税务局有权力调整纳税人之收入或费用;
- MR 370: To confirm the revenue threshold for exemption from the requirement to prepare the TP disclosure form and TP documentation. MR370: 确认被豁免转让定价披露表(TP 披露表)与转让定价同期文档(TP 同期文档) 准备与递交义务之企业年收入条件门槛。

Adjustments for non-arm’s length pricing 针对非独立交易原则订价结果之调整

Section 71 bis of the Thai Revenue Code provides Revenue Department officers with the power to adjust income or expenses of related party transactions where the related parties have commercial or financial arrangements which differ from those between independent parties and a transfer of profits is apparent. This provision is consistent with the OECD Transfer Pricing Guidelines, which use the arm’s length principle as the guiding determinant for pricing of related party transactions. In short, under the arm’s length principle, transactions between related parties should be priced as if the parties are acting independently. 若纳税人(企业)与关联方间之交易和其与非关联方间之类似交易有不同的商业或财务安排·因而产生利润转移·泰国税法第 71 bis 条赋予税务局依照独立交易原则调整纳税人(企业)之收入或费用之权力。此规定与经合组织(OECD)之转让定价原则一致·简而言之·关联方间交易之订价原则·应和企业与非关联方交易时相同。

MR 369 provides guidance on determining whether there has been a non-arm’s length transfer of profits between related parties for the purposes of Section 71 bis. 为了补充说明税法第 71 bis 条之规定·MR369 针对关联方间是否有未依独立交易原则转移利润提供了指引:

The MR defines “commercial or financial arrangements” as: 商业或财务的安排被定义为:

“any condition, agreement or a contract that is related to purchase or sale of products or services, marketing, advertising or other commercial activities or activities related to borrowing, financial support or financial collaboration or other financial related activities regardless of whether there is any written evidence.” 任何与产品或服务买卖有关的条件、约定、契约、营销广告或其他商业活动、以及与借款、财务合作或融资有关的活动、不论是否有书面文件证明。

A non-arm’s length transfer of profits between related parties for the purposes of Section 71 bis will be apparent if the following characteristics are evident: 有下列情形者、可视为有税法第 71 bis 条所述关联方未依独立交易原则移转利润：

- There is a commercial or financial arrangement between the parties, which differs from that which would have been agreed to between independent parties; and 交易双方有商业或财务之安排时、此安排与其与非关联方进行类似交易时之安排不同;
- Such arrangement results in the transfer of profits through one of the following mechanisms: 此安排造成利润通过下列交易方式转移：
 - Prices of products or services, including conditions or methods of payment for products or services, which differ from the prices of the same products or same services charged by independent companies or juristic partnerships under the same circumstances. 商品或服务之价格、包括付款条件或方式、与在相同情形下提供给非关联方相同商品或服务时收取的价格不同。
 - Interest, financial service fees, other financial charges received or paid which differ from those received or paid between independent companies or juristic partnerships. 收取或支付之利息、财务服务费与其他费用、与向非关联方收取或支付不同。
 - Other income received or expenses paid which differ from those received or paid between independent companies or juristic partnerships. 其他收取或支付的费用、与向非关联方收取或支付不同。

In determining the amount of the adjustment to income or expenses of the related party transactions, which are regarded as non-arm’s length, the officers will have regard to the following benchmarks: 税务局考虑针对未依独立交易原则进行之交易调整纳税人收入或费用时、可以下列信息做为调整基准：

- Information from the same transactions entered into between the related companies or juristic partnerships and independent entities (usually referred to as “internal comparables”); and, 关联方和非关联方进行类似交易之信息 (通常被称作内部非受控可比较对象)；
- If an internal comparable is not available, information from same transactions between independent entities (usually referred to as “external comparables”). Such transactions may be conducted inside or outside of Thailand or between companies or juristic partnerships, which are established under Thai or foreign laws. This provision suggests that the Thai Revenue Department may allow foreign comparables in certain situations, but we expect further guidance to be issued on this matter. 当内部非受控可比较对象信息无法取得时、非关联方间进行类似交易之信息 (通常被称作外部非受控可比较对象)。此信息可以是在泰国境内或境外进行之交易信息、或是泰国公司与外国公司交易之信息。此条款意谓泰国税务局在特定情形下将允许使用外国的可比较对象信息、然而预期税务局未来会针对适用情况发表更多细节与指引。

Importantly, the MR specifically provides that the Director-General of the Revenue Department will issue further guidance on the application of the MR. 部级法规明确规定税务局局长将进一步发布适用此部级法规之细节与指引。

The income or expenses adjusted by the officers will be used for the purposes of calculating net profits for corporate tax purposes under Section 65 or calculating income for withholding tax purposes under Section

70 or profits for profit remittance tax purposes under Section 70 bis. 税务局依上述方法调整之收入或费用，适用于应依照税法第 65 条、第 70 条、及第 70 bis 条计算应税所得与应扣缴税款。

Revenue threshold exemption 豁免 TP 披露表与 TP 同期文档递交与准备义务之企业年收入门槛

Under Section 71 ter of the Revenue Code, companies or juristic partnerships with related parties are required to prepare and lodge an annual TP disclosure form. Thereafter, these companies may be requested to provide TP documentation by the Revenue Department officers within a stipulated period. 根据税法第 71 ter 条，有关联方之公司或合伙企业必须准备与递交 TP 披露表，且税务局得要求企业在一定时限内向税务局提示 TP 同期文档。

MR 370 provides that companies or juristic partnerships with annual revenues not exceeding Thai Baht 200 million will be exempt from the requirement to lodge the annual TP disclosure form and TP documentation under Section 71 ter. MR370 规定年收入未达 2 亿泰铢之企业被豁免税法第 71 ter 条规定应递交 TP 披露表与准备 TP 同期文档之义务。

We expect that there will be additional guidance issued in relation to the transfer pricing laws, including required contents for the TP documentation and acceptable TP methods. We will keep you updated on any further guidance issued. 我们预计税务局将陆续发布与转让定价法令相关之细则与指南，我们会及时与您分享最新动态。

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