

Tax Alert

Thailand Transfer Pricing Law Approved

The draft transfer pricing law was approved by the National Legislative Assembly on 27 September 2018 and is expected to be enacted and published in the Royal Gazette shortly.

The wording of the final law will be available to the public once published in the Royal Gazette. The Thai Revenue Department ("TRD") will also issue Ministerial Regulations to provide more guidance to taxpayers on the application of these laws. Based on information currently available, the key features of the new law are as follows:

1. The law will be effective for accounting periods commencing on or after 1 January 2019.
2. The following levels of documentation will be required:
 - A report (disclosure form) filed with the annual corporate tax return, which provides information on the relationship between entities and the value of intercompany transactions
 - Three-tiered transfer pricing documentation based on the Organization for Economic Co-operation and Development ("OECD") approach:
 - Country-by-country ("CBC") report;
 - Master file; and
 - Local file.

The contents of the Master and Local files will be specified in the Ministerial Regulations. We understand that the CBC reporting requirement will be contained in another set of laws.
3. Tax officers, upon approval from the Director-General of the TRD, can request transfer pricing documentation within 5 years after the submission of the report.
4. The Local file and Master file will be due 180 days after receiving a notification from the TRD for the first time. Thereafter, the files will be due within 60 days with possible extension to 120 days upon request. The lodgement date for the CBC report is still not clear.
5. Failure to lodge the disclosure form or transfer pricing documentation by the due date or lodgement of incomplete/incorrect disclosure form or transfer pricing documentation will result in a fine of Baht 200,000.
6. Taxpayers with total revenue less than Baht 200 million are exempted from the requirement to lodge the disclosure form and transfer pricing documentation. Another (higher) revenue threshold may apply for CBC and Master files. Further exemptions may be provided under the Ministerial Regulations and may include, for example, taxpayers operating on the same corporate income tax rate (provided they do not have losses carried forward).
7. Tax refunds resulting from a transfer pricing adjustment can be requested within 3 years from the due date for filing of the tax return or within 60 days of receiving written notice of a transfer pricing adjustment from the tax officer.

With the introduction of the transfer pricing law, taxpayers should ensure transfer pricing compliance. Well-prepared, contemporaneous transfer pricing documentation not only serves as an efficient tool in preparing the disclosure form to be submitted with the annual corporate 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.

The Deloitte Thailand transfer pricing team will be arranging a seminar on the new transfer pricing rules in the near future and we will provide details shortly.

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