



Transfer Pricing in Thailand

In Thailand, the concept of transfer pricing has been in place for some time. In 2002, the Thai Revenue Department ("TRD") released Guideline No. Paw. 113/2545 (2002) ("**PAW 113**"), which parallels the OECD's Arm's Length Principle and provides the TRD with guidelines to determine market price between related entities.

In line with increased international scrutiny over transfer pricing, in November 2018, the TRD released the Revenue Code Amendment Act No. 47 ("**TP Law**"). The TP Law adds three sections regarding transfer pricing into the Revenue Code and is effective for the accounting period starting 1 January 2019 onwards. In November 2019, to assess transfer pricing exposure at the level of each taxpayer, the TRD issued regulations under Section 71 ter of the TP Law, requiring the disclosure of related-party transactions in a form. Further regulations detailing transfer pricing principles and methods are pending and expected to be issued later in 2020.

Briefly, the TP Law allows the TRD to adjust the incomes and expenses of a taxpayer if (i) both parties in the transaction are related parties; (ii) the commercial or financial terms between them are different from independent transactions; and (iii) there is a reason to believe that the transaction is for profit-shifting. The definition of related parties include not less than 50% shareholding as well as management and control.



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TP Law – requirements in summary

	Documentation	Disclosure Form
What is required?	<p>The TP Law does not go into details on the constituents of adequate transfer pricing documentation.</p> <p>From PAW 113, documentation to support transfer prices should detail the functions and risks undertaken by each related party to the transaction, the transfer methodology chosen, and the economic analysis conducted to arrive at an arm's-length outcome.</p>	<p>Information on each related party (registered in Thailand or offshore) and whether the Thai taxpayer has transacted with that related party.</p> <p>If there are related-party transactions, details pertaining to that related party are required - operating income; other income; purchases of raw materials and goods; purchases of land, building, and equipment; other expenses including royalties, management fees, technical fees, brokerage fees, interest payable; and outbound/inbound loans as at the end of the accounting period.</p>
For which year?	Required in 2020, for the financial year 2019 accounting period.	
Who must prepare?	Thai companies or juristic partnerships with income greater than Baht 200 million in the financial year 2019 accounting period	
When to prepare?	Within 60 days (some extension may be possible) upon receipt of the request.	Within 150 days from the end of the 2019 accounting period.

Penalties

If a related-party transaction is not deemed to be conducted at arm's length, the TRD has the power to make an adjustment to the income and/or expense of the taxpayer concerned. Should this result in a tax shortfall, besides paying the additional income tax, there may be a penalty of up to 200% on the amount underpaid, plus a surcharge of 1.5 percent per month on the amount of the shortfall (starting from the filing due date). Furthermore, the TP Law allows for a fine up to Baht 200,000 if the taxpayer has not complied with the related-party disclosure form and transfer pricing documentation requirements. It is also worth noting that the transfer pricing adjustment may result in withholding tax and VAT exposures.

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How are multinationals responding?

For Thai companies with a December 2019 year-end, the filing due date for the transfer pricing disclosure form is fast approaching. Companies are conscious that their transfer pricing approach can be inferred from the disclosure form and many have been proactively reviewing and tidying up their transfer pricing.

Responding to the TRD's increasing focus on transfer pricing, Thai companies have also commissioned reviews to assess the soundness of their existing transfer pricing methodology. Some of these reviews have turned up inadequacies which need to be addressed through rethinking the transfer pricing approach. Just as important, many companies have started to prepare transfer pricing documentation to support their transfer prices and to be prepared for the day when such documentation should be requested.

We can help

Our transfer pricing team is staffed by experienced economists, tax lawyers, accountants, and financial analysts — all working together to give you the multi-faceted, incisive advice that you need. Our transfer pricing services include planning, documentation, compliance reporting, risk assessment, due diligence, audit defense, dispute resolution, and legal support.

For further information, please contact the team at Baker McKenzie.

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