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Thailand's New Transfer Pricing Disclosure Requirements

If your company has been doing business in Thailand, you might already be aware of the additional corporate tax reporting requirement for the accounting period for the 2019 fiscal year (FY2019), starting from January 1, 2019. Under the new requirements, companies with income of at least THB 200 million that transacted with related parties are now required to file a transfer pricing disclosure form with the Revenue Department (RD) upon filing the annual corporate income tax return, called a PND.50. This new two-page form is the Transfer Pricing Disclosure Form.

The aim of this article is to help you understand whether your company is required to file the disclosure form, and, if so, the correct way to complete and file it.

Who Has to File the Disclosure Form?

1. Companies with at least THB 200 million of income in FY2019

This THB 200 million threshold refers to the total income presented on your company's audited financial statements for FY2019, not just the income from sales or services without regard to other income. Also, this should not be confused with the total taxable income on your company's PND.50, which might be unequal to the company's total income on financial statements.

2. Companies that transacted with a "related party" during the accounting period

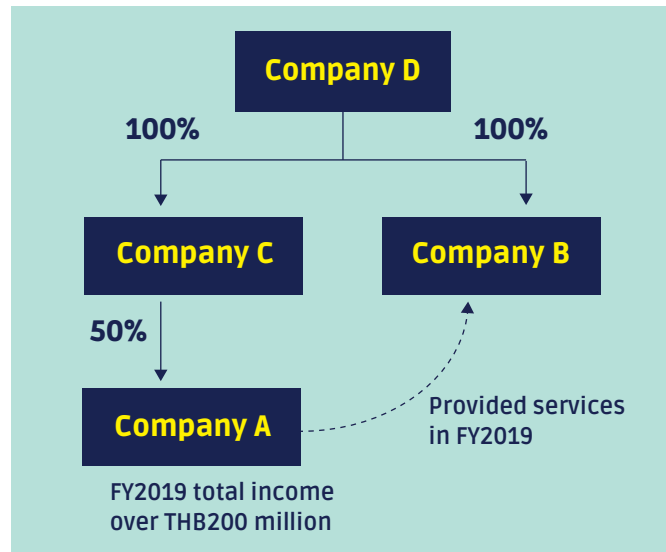
Under section 71 bis of the Revenue Code, two or more companies or juristic partnerships are considered "related parties" under the following circumstances:

1. They hold shares in another entity, whether directly or indirectly, of at least 50 percent of that entity's total share capital.
2. The same shareholder holds shares in each entity, whether directly or indirectly, amounting to at least 50 percent of the total share capital.
3. They are related in terms of capital, management, or control that makes one entity unable to operate independently from the other, as prescribed by ministerial regulation.

For FY2019, companies can only be considered related parties due to share capital (i.e., the first two rules listed above). The RD has not yet issued a ministerial regulation to further define the entities classified under rule 3. Therefore, for now, there is no need to take action if your company is only related to another company because of the capital, management, or control.

Parties related by shares under rules 1 and 2 seem to be simple to identify. However, the phrase "whether directly or indirectly" makes things a bit more complex. This phrase means you have to know the whole shareholding structure

and percentage all the way up to the ultimate parent-company level, regardless of whether it is in Thailand. If your company is the one holding at least 50% of the total share capital in another company (i.e., your company is the parent company), you will have to know what, and how much, each subsidiary holds. This phrase also requires you to know your company's vertical relationships with other companies. The chart below illustrates this principle, as described in related-party rules 1 and 2.



In this scenario, during FY2019, Company A provided services to Company B, resulting in the total income of Company A crossing the THB 200 million threshold. Company A and Company B do not hold any shares in each other, but they are considered related parties, because of Company D.

The shareholding structure makes Company D a related party of all three of the other companies under rule 1—by Company D's direct share ownership of Companies B and C, and by its indirect share ownership of Company A. As a result of this indirect share ownership, Company A and Company B are related parties under rule 2. If the total income of Company B was less than THB 200 million, then only Company A would have to file the disclosure form. However, on the disclosure form, Company A would have to report all three companies (Companies B, C, and D) as related parties, even though none of these three entities are required to file their own disclosure form in FY2019, including the value and type of transactions that Company A had with the three related parties.

How to Complete the Disclosure Form

Information about transactions between related parties could expose many tax and transfer pricing issues.

The RD would like to see the value of ten transaction types occurring during the year with each related party. This means that your accounting team will likely have a lot of additional work.

For instance, the disclosure form asks for the cost of raw materials and products purchased from related parties during the year. If you purchased raw materials or products from one related party, that would seem straightforward. However, the number that the RD wants to see is the expenses incurred during that particular year only. The cost of goods or services on your company's accounts would normally also carry the cost from the previous year.

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Therefore, your accounting team cannot simply lift the accounting sum to fill in the disclosure form. The number will need to be adjusted to reflect the shorter time period.

Another example is the disclosure form asking for the amount of royalty fees that the company actually paid during the year—generally meaning royalties paid under section 40(3) of the Thai Revenue Code (e.g., licensing fees, copyright fees, etc.). However, if your company paid rental to related parties overseas, that rental may be considered royalties as well under some double taxation agreements. Therefore, your accounting team will also need to know the relevant agreements and apply the withholding tax rate or value added tax correctly).

In addition to the amount disclosures, there are also checkbox questions to be completed.

How to File the Disclosure Form

Although the disclosure form has to be filed together with the PND.50, the disclosure form is currently not available for e-filing. In February 2020, the RD stated that they were working on implementing online filing for the disclosure form, but we anticipate that it may only become available shortly before the filing due date—May 29, 2020, if

your company accounting period for 2019 was from January 1 to December 31.

It must also be noted that, even if e-filing becomes an option for filing the disclosure form, there is currently no law to allow extension of the filing due date for an additional eight days, as there is for the filing of other tax returns. The RD would have to issue a new law to extend the due date for online filing of the disclosure form. The Notification of the Ministry of Finance Concerning the Due Date Extension for e-Tax Filings and Payments, issued on January 28, 2019, does not cover the filing of the disclosure form.

Impact

Although the disclosure form is meant to be a tool for transfer pricing risk assessment purposes and not for tax assessment, there are financial liabilities for noncompliance. The fine for not filing, or reporting incorrect information without a justifiable reason, is THB 200,000 (approx. USD 6,425), whereas the fine for not filing the PND.50 on time is only THB 2,000 (approx. USD 64). The hefty fine will be imposed regardless of whether the violating company pays millions in corporate income tax or had no tax shortfall at all. Therefore, prudent business owners must consider their company's filing requirements carefully—both whether they are required to file the disclosure form, and, if so, what information must be disclosed. 🚧