



Tax News Flash

KPMG in Thailand



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New Transfer Pricing Regulation in Thailand

On 6 November 2020, the Minister of Finance issued Ministerial Regulation No. 369 (B.E. 2556) ("MR 369") under the Thai Revenue Code ("TRC") to essentially prescribes certain rules, conditions, and methods for Tax Officers of the Thai Revenue Department ("TRD"). MR 369 allows Tax Officers to assess or adjust the income and expenses of related parties (as defined under Section 71 bis of the TRC) who engage in related party transactions and who do not comply with arm's length principles, particularly for those that result in the undue transfer of profits between related parties.

MR 369 identifies the following three commercial or financial conditions that are believed to induce a transfer of profits:

- (1) commercial or financial conditions between related parties; and
- (2) commercial or financial conditions between related parties that differ from those that would otherwise be agreed between independent parties; and
- (3) commercial or financial conditions between related parties that results in a transfer of profits between related parties via (a) a difference in price, terms or payment methods for the goods or services, (b) a difference in interest rates or any other financial fees and (c) a difference in other income or expenses, as compared to comparable independent transactions under the same circumstances.

MR 369 indicates that Tax Officers shall assess or adjust income and expenses between related parties to put them at arm's length using the following two methods – i) an internal comparable approach, or ii) an external comparable approach.

KPMG's Observation

This demonstrates that the TRD is focusing more and more on transfer pricing, and that there will be more rules, procedures, and conditions related to the implementation of MR 369 to be launched at a later date. It is important to note that MR 369 mentions an external comparable approach using foreign entities, about which we need to wait for more details.

To manage transfer pricing risk in advance, it is recommended that local files with benchmarking studies should be prepared and maintained contemporaneously.

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