



Tax News Flash

KPMG in Thailand



Issue 89 : January 2021

New Transfer Pricing Notification from Thai Revenue Department

On 14 January 2021, the Director-General of the Thai Revenue Department (“TRD”) issued two notifications regarding the guidelines relevant to transfer pricing (“TP”) and reporting related party transactions. The notifications were issued in order to enable the fair and effective implementation of Thailand’s new TP law.

Notification of the Director-General (“DGN”) of the TRD regarding corporate income tax (“CIT”) No. 400 (“DGN-CIT No. 400”)

The key highlights from DGN-CIT No. 400, which is applicable to all accounting periods starting on or after 1 January 2021, are virtually the same as the draft version dated 19 June 2019 (please refer to our KPMG Tax News Flash No. 61, [click here](#) for more details). However, there have been some key changes from the draft, and these are summarized below:

- For service transactions, this DGN additionally states that compensation for service transactions arising for the benefit of shareholders is not to be treated as compensation established independently.
- For intangible assets, the functions involved for activities in development, enhancement, maintenance, protection and exploitation (“DEMPE”), taking into account the assets employed and risks assumed, must be considered for comparability purposes under this DGN.
- In the draft version, it was indicated that there would be a secondary transfer pricing adjustment (this is consistent with the TRD’s adopted practice under recent transfer pricing audits). According to the draft version, and in line with adopted TRD practice, when a primary transfer pricing adjustment is made resulting in higher profits for one taxpayer, if the counterparty of the controlled transaction is a shareholder of the taxpayer, the transfer pricing adjustment amount after deducting additional CIT will be deemed as dividend or profit sharing and subject to 10 percent withholding tax based on local tax law. In case the counterparty is not a shareholder of the taxpayer, the transfer pricing adjustment amount after deducting additional CIT should be deemed as interest payment subject to withholding tax at the applicable rate based on local tax law.

However, it should be noted that DGN-CIT No.400 indicates that secondary adjustments will be made in accordance with Section 70 and Section 70 bis of the Revenue Code, which is broader.

DGN on TP reporting guidelines (“DGN-TP”)

In addition to revoking the previously issued DGNs (i.e., general DGNs regarding TP documentation for documenting related party transactions and including DGN-CIT No. 372), this DGN-TP provides guidelines explaining the process of filing a TP disclosure form (“TPDF”). As per this DGN, which is

applicable to fiscal years starting on 1 January 2020 or later, the TPDF must be submitted by a taxpayer, or by a company/juristic partnership on behalf of a related company/juristic partnership, who is obliged to submit a TPDF in the relevant accounting period. Companies/juristic partnerships obligated to submit a TPDF must register to submit the TPDF to the TRD via the TRD's online submission platform (by logging on to www.rd.go.th) or via the Ministry of Finance's tax single sign-on service (by logging on to <https://etax.mof.go.th>). If a company/juristic partnership cannot submit their TPDF online, they may download and print the TPDF from the TRD's website and submit it to their respective Revenue Office along with a letter to the Director-General explaining the reasons why they could not submit the form online. TPDF filing shall only be completed when the company/juristic partnership receives a reference number/receipt of successful filing.

KPMG's observations and recommendations

With additional guidance now having been released with respect to preparation of the TP documentation required under Thailand's new TP law, multinationals investing in Thailand and Thai corporations entering into related party transactions and with total income from its business (or related income derived from its business) starting from THB 200 Million, should pro-actively start preparing robust TP analysis and documentation.

This will not only be essential for the effective management of the risks associated with Thailand's new detailed TP law and its strict documentation requirements, but will also be key to supporting negotiations with the tax authorities regarding future proposed primary and secondary TP adjustments or imposed penalties (if any).

Key Contacts

[Abhisit Pinmaneekul](#)

Head of Tax
KPMG in Thailand

Global Compliance Management Services (GCMS)

[Nipawan Passarapark](#)

Partner

[Pornpen Eurpiyachat](#)

Partner

[Visuth Apiraks](#)

Director

[Matthew Evan Jeamjit](#)

Director

[Waraporn Dhammasawangki](#)

Director

Global Mobility Services (GMS)

[Lynn Tastan](#)

Partner

[Panisa Srihera](#)

Director

International Tax / M&A Services

[Auaychai Sukawong](#)

Partner

[John Andes](#)

Partner

[Tatiana Bepalova](#)

Partner

[Tomonori Shibata](#)

Partner

[Thanita Pubordeepong](#)

Director

Transfer Pricing Services

[Abhisit Pinmaneekul](#)

Partner

[Benjamas Kullakattimas](#)

Partner

[Burin Yenthanakorn](#)

Director

[Chollatip Santitorn](#)

Director

Trade & Customs Services

[Malika Bhumivarn](#)

Partner

[Sophon Dulvarassamee](#)

Associate Director

home.kpmg/th



[Privacy](#) | [Legal](#)

You have received this email from KPMG Phoomchai Tax Ltd. If you wish to unsubscribe from our mailing list, please click here to [unsubscribe](#).

© 2021 KPMG Phoomchai Tax Ltd., a Thai limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

