



## LEGAL

# TRANSFER PRICING

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The National Legislative Assembly recently passes the Bill Amending the Revenue to introduce transfer pricing law (the "Bill"). The Bill imposes a couple new requirements on a related transaction, which is a business transaction between two related legal entities. Sponsors, the STCC is planning to launch a couple of Corporate Responsibility (CSR) projects. It will include scholarship for Thai students in the hospitality sector, vocational education scholarship for underprivileged students from rural areas, or donations to other social institutions in help of need. Once the Board of Directors decided on the allocation of funds for the SCS programs, we will let you know.

#### 1. Assessment Official's Power to Adjust Income and Expenses

The Bill empowers an assessment official to adjust a contract price (income or expense) of a related transaction to a reasonable amount on an arm's length basis under these conditions.

1.1 The related transaction is entered into by two legal entities (companies or juristic partnerships) that are related to each other as defined in the Bill.

1.2 Any commercial term or any financial term of the related transaction is not reasonable as if both legal entities operate independently. In other words, both legal entities set forth the commercial term or the financial term of the related transaction to transfer a profit from a high taxed legal entity to a tax exempt or low taxed legal entity. This means the commercial term or the financial term of the related transaction is not on an arm's length basis.

1.3 Both legal entities would not set forth the commercial term or the financial in this manner (to shift the profit from one legal entity to another legal entity) if both legal entities were not related to each other or operated independently.

1.4 The assessment official is empowered to adjust (or assess) a contract price of the related transaction (income of one legal entity or an expense of another legal entity) to a reasonable amount that would be if both legal entities were not related to each other or operated independently. In other words, the assessment official may adjust the contract price of the related transaction on an arm's length basis.

#### Definition of Related Legal Entities

Two legal entities are related to each other if:

1. One legal entity holds the shares or is a partner in another legal entity either directly or indirectly not less than 50% of the total capital.

2. A shareholder or a partner who holds the shares or is a partner in one juristic person either directly or indirectly not less than 50% of the total capital holds the shares or is a partner in another legal entity either directly or indirectly not less than 50% of the total capital.

3. Legal entities have relationships in capital, management or control in a manner that one legal entity may not operate independently from another legal entity as prescribed Ministerial Regulation.

As a result of such adjustment if any legal entity ends up overpaying income tax, such legal entity has a right to claim back such tax within three years from a last date of a filing period or within 60 days from a receipt of an adjustment notice ac-



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According to a rule announced by the Director General of the Revenue Department.

### 2. Reporting Requirement

Each of the related legal entities must file a report on information of a related legal entity and a total value of related transactions in a form prescribed by the Director General of the Revenue Department.

Within five years after receiving such report, an official with an approval from the Director General of the Revenue Department may request a filer to submit any document or evidence necessary for analyzing terms of such related transaction. The filer must submit such document or evidence within 60 days after receiving the request.

This reporting requirement is not applicable to a small business having the annual income not exceeding an amount prescribed in the Ministerial Regulation, which must not be less than Baht 30 Million. Small companies will not be affected by this Bill.

We trust the article will be informative, enriching and useful for you and your business.

Should you require more information, please do not hesitate to contact us.

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