

New Notifications relating to the application of the Thai Transfer Pricing Laws 关于泰国转让定价法令的税务局长新通知

TP Alert 转让定价快讯

The Thai Revenue Department has issued two new notifications relating to the application of the Thai transfer pricing laws as follows: 泰国税务局近日发布下列两则关于转让定价法令的最新通知：

- Notification of the Director-General of the Revenue Department on Income Tax (No. 400) - Rules, procedures, and conditions on the adjustment of income and expenses of related companies or juristic partnerships (“DGN 400”) 税务局长通知 DGN 400 – 关于调整与关联方交易之收入及费用的规则、程序与条件。
- Notification of the Director-General of the Revenue Department - Forms, rules, procedures and conditions for submission of the annual report for information of related companies or juristic partnerships and total value of intercompany transactions in each accounting period (“DGN – TP Disclosure Form”) 税务局长通知 – 关于提交年度关联方交易明细披露表之表单、规则、程序与条件 (转让定价披露表提交通知)

Transfer Pricing (“TP”) Adjustments 转让定价之调整

DGN 400 was issued under Ministerial Regulation 369 to provide rules for Revenue Department officers for assessing TP adjustments for transactions between related parties. 税务局长通知 DGN 400 是依据先前税务局公布的部级法规 MR369 发布的细则办法，提供税务局评估关联方交易的定价调整的规则。

Adjustment for non-arm’s length pricing. 调整非独立交易定价结果 The Notification reaffirms the power provided to Revenue Department officers under Section 71 bis of the Revenue Code to adjust income or expenses for transactions between related parties where such transactions are not priced on an arm’s length basis i.e. the pricing does not reflect the pricing which would have applied for transactions between independent parties. The income or expenses adjusted by the officers will be used for the purposes of calculating net profits for corporate tax purposes under Section 65 or calculating income for withholding tax purposes under Section 70 or profits for profit remittance tax purposes under Section 70 bis. 税务局长通知 DGN 400 再次强调税法第 71

bis 条授权税务官员有权调整关联企业之间交易不符合独立交易原则的收入与费用。非独立交易价格即关联方交易价格与独立第三方之间交易时采用的价格不同。税务员调整收入或费用之结果会被使用在计算当年度企业所得税(依税法第 65 条)、计算代扣税(依税法第 70 条)、以及计算利润汇回税(依税法第 70 bis 条)。

Acceptable Transfer Pricing Methods. 泰国税务局可接受的转让定价方法 The Notification lists the acceptable TP methods, together with the relevant financial indicator for each method, which should be considered in determining the most appropriate method for pricing for related party transactions as follows: 稅務局長通知 DGN 400 列出了在選擇最適當的转让定价方法評估关联方交易時，泰國稅務局可接受的转让定价方法以及各個方法適用的財務指標。

Transfer Pricing Method 转让定价方法	Financial Indicator 财务指标
Comparable Uncontrolled Price 可比未受控价格法	Price 价格
Resale Price Method 再销售价格法	Resale margin 再销售毛利
Cost plus method 成本加成法	Mark-up on costs 成本加成率
Transactional Net Margin Method 交易净利润法	Net profit margin 净利率
Transactional profit split method 利润分割法	Division of operating profit 营业利润的分割比例

These methods are consistent with the recognized OECD TP methods. The Notification also allows for the adoption of other transfer pricing methods not listed above. However, it will be necessary to demonstrate that none of the above TP methods could be applied before adopting another method. Also, if a non-listed method is used, the company or partnership is required to notify the Revenue Department in writing with a preliminary explanation of the method in the year in which the transaction takes place. 上述转让定价方法与 OECD (经济合作暨发展组织)规范的转让定价方法一致。除了这些方法之外，税务局也允许采用其他转让定价方法，然而必须有证据显示上述的转让定价方法均不适用后，才能采用上述方法以外的转让定价方法。若纳税人采用上述方法以外的转让定价方法，纳税人必须在关联方交易发生之年度，以书面方式通知税务局，说明对该关联方交易采用其他转让定价方法之原因以及解释纳税人使用之转让定价方法。

Selection of Transfer Pricing Method. 选择转让定价方法 There is no specific hierarchy provided for consideration of the TP methods. In selecting the most appropriate TP method for a related party transaction, the company or partnership should consider the following factors: 在选择适当的转让定价方法时，需考量下列因素：

- (1) Strengths and weaknesses of each TP method; 各个转让定价方法之优缺点；
- (2) Appropriateness of the method based on the characteristic of the related party transaction and functional analysis of each party to the transaction; 依据关联方交易之特性以及交易各方之功能风险分析，考虑使用该转让定价方法之适当性；
- (3) Availability of reliable comparable information for transactions between independent parties 可比独立交易资讯之可取得性；
- (4) Level of comparability of the related party transaction and independent transactions/businesses 独立交易与关联方交易之可比较程度。

Comparability analysis. 可比程度分析 An independent transaction (referred to as an uncontrolled transaction) will be regarded as comparable to the related party transaction (referred to as a controlled transaction) under consideration if either: 当符合下列情形之一时，一个独立交易 (或称非受控交易) 可被视为与关联方交易 (或称受控交易) 具备可比性：

- There are no differences between the independent transaction and related party transaction which have a material impact on the relevant financial indicator for the TP method under consideration 该独立交易与受控交易在功能、风险、资产分析的结果无差异，对选用的财务指标无影响。
- Differences between the independent transaction and related party transaction give rise to a material impact on the relevant financial indicator for the TP method under consideration, but reliable adjustments can be made to account for such differences 该独立交易与受控交易在功能、风险、资产分析的结果有差异，且该差异会影响选用的财务指标但有可靠的调整方式可消除此差异。

The following factors should be considered in determining comparability between the related and independent transactions: 决定受控交易与独立交易之可比性时，应考虑下列因素：

- (1) Contractual terms of the transaction; 交易契约条件；
- (2) Functions performed by each of the parties to the transaction, taking into account assets employed and risks assumed; 交易各方执行之功能，同时考量其使用之资产与承担之风险；
- (3) Characteristics of property transferred or services rendered; 商品或服务之特性；
- (4) Economic circumstances at the time when transaction takes place; and 交易时的经济环境；
- (5) Business strategies pursued by the related company or juristic partnership. 交易双方的商业策略。

Aggregation of transactions. 关联交易合并验证 A company or partnership is allowed to aggregate related party transactions together where they are interrelated and it is not possible to reliably segregate them for the purposes of the selection and application of the most appropriate TP method. This recognizes the practical difficulties in analyzing each and every related party transaction separately. 当数个受控交易彼此互相关联，且无法被可靠的区分并各别决定最适当的转让定价方法时，纳税人可以将数个关联方交易合并验证。这表示税务局也理解在某些情形下，要各别分析每一个关联方交易有实务上的困难。

Source of comparable data. 可比数据来源 MR 369 provides that the Thai Revenue Department will consider comparable information from transactions both within and outside Thailand, which suggests that they accept foreign comparables in certain situations. The Notification does not provide further guidance on what situations foreign comparables will be accepted. Based on current Revenue Department practice, we expect that foreign comparables will be accepted where the tested party is a foreign entity e.g. where a foreign company is the provider of management services to its related Thai company. 部级法规 MR369 规定泰国税务局接受泰国及境外可比公司，在特定情况下会考虑接受纳税人采用泰国境外的可比公司。税务局长通知 DGN 400 并未进一步说明在何种情形下会接受纳税人采用泰国境外的可比公司。依据目前税务局的查核实务，我们预期当被测试企业是外国公司时 (例如外国公司向泰国境内关联方提供管理服务，此交易可能会以该外国公司作为被测试企业)，泰国税务局可能会接受纳税人采用泰国境外的可比公司。

Arm's length range. 独立交易区间 An arm's length range will be determined based on the relevant financial indicator for the selected TP method from the comparable independent transactions. The Notification does not specify what data points define the range (e.g. minimum to maximum or interquartile range). If the results for the related party transaction fall outside the arm's length range, the Thai Revenue Department has the power to adjust the related party transaction to the arm's length range. The Notification does not mention a specific point in the range, which the adjustment will be made to, but does recognize that the adjustment should be made to a point which best reflects the circumstances. 独立交易区间依照选用的转让定价方法及由独立可比企业的财务指标决定。但税务局长通知 DGN 400 并没有明确规定如何决定独立交易区间(例如最高值与最低值间为区间, 或四分位区间)。若关联方交易之结果落在独立交易区间之外, 税务局有权力将结果调整至独立交易区间内, 然而税务局长通知 DGN 400 也未明确指出应将结果调整至独立交易区间中的哪一个值, 但认同应调整至区间内符合独立交易原则之最佳结果。

Services. 服务 Service fees will be regarded as arm's length if: 1) services are actually provided and provide a commercial or economic benefit to the recipient, 2) the service recipient would have paid for these services to independent parties or had the service provided by an internal department, and 3) the fee is consistent with what would have been paid to independent parties for similar services. Services which relate to shareholder activities will not be regarded as arm's length.

服务费在满足下列条件时, 会被视为符合独立交易原则: 1) 服务有确实提供, 且此服务对服务收受者有商业上或经济上的利益; 2) 此服务在服务提供者为非关系人之独立个体的情况下, 服务收受者会支付相应服务费用, 或需要有内部服务部门来提供此服务; 以及 3) 支付的服务费用与支付可比服务费给独立个体时一致。值得注意的是, 股东活动有关的服务通常不被视为符合独立交易原则。

Intangible Property. 无形资产 In determining the comparability of related and independent party transactions in relation to the exploitation of intangible property, the functions performed by each contractual party regarding the development, enhancement, maintenance, protection, and exploitation ("DEMPE" functions) of such intangible property, as well as the assets employed and risks assumed, shall be taken into account. This is consistent with the most recent version of the OECD TP Guidelines, which introduced consideration of the control over DEMPE functions as a basis for determining which entity(ies) should receive returns from intangible property. For example, if a foreign company has only legal ownership over the intangible property, but the DEMPE functions are performed and controlled by another company in the group, then the returns from the intangible property should accrue to the second company. When considering the arm's length remuneration for grant of the rights to use intangible property, the expected benefits, geographical usage and uniqueness of the property should be considered.

在判断与无形资产使用有关交易之可比性时, 交易双方针对无形资产之 DEMPE, 即发展(development)、价值提升(enhancement)、维护(maintenance)、保护(protection)、开发利用(exploitation), 以及资产的使用与风险承担的状况均须纳入考虑。这和最新版 OECD 转让定价指引一致, 两者都将对无形资产 DEMPE 的控制与参与做为无形资产之利润归属的决定基础。例如, 若一外国公司仅有无形资产法律上的所有权, 但无形资产 DEMPE 活动都由集团内另一家关联公司履行及控制, 则此无形资产产生的利润应归属于后者。在评估使用无形资产之独立交易结果时, 应考虑无形资产预期的利益、授权使用的地理区域, 与独特性。

Corresponding adjustments. 交易双方相对应调整 If a TP adjustment has been assessed by tax officers and the tax paid either at the audit level or after finalization of an appeal or court judgement, then the tax assessment officers have the power to make a corresponding adjustment to the income or expenses of the counter-party to the related party transaction. For example, if a Thai company is receiving management services from its Thai parent company and

the tax officers find that the management fee is higher than an arm's length amount and adjust the management fee expense downwards, then they may provide a corresponding downward adjustment to the management fee income recognized by the Thai parent company. If the corresponding adjustment is made to counter-party which is resident in a country with which Thailand has a double tax agreement, then the corresponding adjustment will need to be made under provisions of the agreement.

当税务官员在税务查核时核定了转让定价调整且纳税人缴纳税款之后，或是法院判决确定之后，税务局有权力对交易对方的收入或费用进行相对应调整。例如一个泰国公司接受其泰国母公司提供的管理服务，而税务局发现泰国母公司收取的服务费高于独立交易价格，因此依照独立交易原则调低子公司申报的服务费用，接着相对应调低母公司申报的服务收入。若相对应调整的交易对方是泰国租税协定缔约国的税务居民，相对应调整应该依照双边税收协定的条款进行。

Advance Pricing Agreements. 预约定价协议 Companies or juristic partnerships may apply for bilateral/multilateral advance pricing agreements between Thailand and other countries for transactions with their related parties outside Thailand under Thailand's double tax agreements. Interestingly, there is no mention of whether it is possible for companies or juristic partnerships to obtain unilateral APAs with the Thai Revenue Department only. 纳税人与关联方交易之交易方可以依照泰国与其他国家签定之双边税收协定申请泰国与其他国家之双边或多边预约定价协议。然而此处并未说明纳税人可否向泰国税务局申请单边预约定价协议。

Applicability. 适用性 The Notification is applicable for accounting periods commencing on or after 1 January 2021. This, however, means that there is a gap between the first accounting period for application of Section 71 bis (i.e. accounting periods commencing on or after 1 January 2019) and the guidelines issued under this Notification. Presumably, however, some of the general principles contained in this Notification will be applied in practice for 2019 and 2020 years. 此税务局长通知 DGN 400 自 2021 年 1 月 1 日起之会计年度适用，表示和泰国税法典中转让定价法令生效的时间(即 2019 年 1 月 1 日起之会计年度)有时间差，然而，预期实务上税务局会认为税务局长通知 DGN 400 提到的某些一般原则也适用于 2019 和 2020 年度。

Lodgement of TP Disclosure Form 提交转让定价披露表

DGN – TP Disclosure Form provides the process for lodgement of the TP Disclosure Form for accounting periods starting on or after 1 January 2020. This Notification cancels and replaces the two Notifications previously issued which will still apply for accounting periods starting on and between 1 January 2019 and 31 December 2019. 转让定价披露表提交通知说明自 2020 年 1 月 1 日开始之会计年度起，转让定价披露表提交的方式，同时废止并代替先前的两个适用于会计年度起始日介于 2019 年 1 月 1 日起与 12 月 31 日之间的税务局通知。

Electronic filing. 电子申报提交 The Notification provides that the TP Disclosure Form can be lodged electronically by either: 此通知说明转让定价披露表可以透过下列两种电子方式提交：

- using the username and password obtained from the registration to access the Revenue Department's system, or 注册税务局系统后，取得使用者名称与密码登入系统提交；
- by using the username and password obtained from the registration to access the Tax Single Sign On service of the Ministry of Finance. 注册财政部的 Tax Single Sign On 系统后，取得使用者名称与密码登入系统提交。

The TP Disclosure Form will be considered as lodged when the company or partnership has obtained the reference number from the system. 纳税人透过上述方式提交并取得系统发送的确认代码后，视为完成提交程序。

Manual filing. 人工申报提交 There is a clear preference from the Thai Revenue Department for companies or partnerships to lodge the TP Disclosure Form electronically. If, however, the company or partnership is not able to lodge electronically and has justifiable reasons, then the Form can be printed from the Revenue Department website, completed and lodged together with a letter providing the justifiable reasons for the inability to lodge electronically. 税务局明确希望纳税人透过上述电子申报方式提交转让定价披露表。然而，若纳税人有特殊理由无法以电子方式提交者，可自税务局网站列印该表并填写完成后，连同一份向税务局解释无法透过电子申报提交之书面说明函，一并以人工方式提交给税务局。

Successful manual lodgement of the Form will be evidenced by a receipt issued by the relevant Thai Revenue Department Area/District office. 纳税人取得税务局发给之转让定价披露表申报收据后，视为完成提交程序。

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