



Transfer Pricing Law

The Revenue Code Amendment Act No.47 regarding Transfer Pricing law became effective on January 1, 2019. The crucial objective is to set measures to resolve problems in the case of determining the transfer pricing between the related parties having the nature of selling of products or providing services. In addition, the law regulates transfers of revenue and expenses in order to ensure the tax obligations of companies.

The importance of Transfer Price law is to create corporate tax reporting requirements for the accounting period for the fiscal year. According to the new requirements, the companies are required to prepare and file the correct and complete disclosure form within 150 days as from the last date of fiscal year.

The disclosure form is applicable to the following:

- two or more companies or juristic partnerships are considered “related parties” under any of the following circumstances;
 - pursuant to section 71 bis of the Revenue Code , one company directly or indirectly holds shares in the other company, of at least 50 percent of the total share capital of the other company,
 - The same shareholder or partner holds shares in each company, amounting to at least 50 percent of that company’s total share capital, whether directly or indirectly.
 - The companies are related in term of capital, management, or control that makes one company unable to operate independently from the other company.

- Under section 71 ter of the Revenue Code, the company has income from sales and services of at least THB 200 million of total income in fiscal year, without regard to other income.

Nevertheless, if the company fails to prepare and file the disclosure form, there will be both civil and criminal penalties.

Tax e-Payment Act

According to the Amendment to Revenue Code (No. 48), it was enacted for the purpose of inspection and tracking of information for collection of taxes and duties through the electronic means. This law will impose the obligation on the commercial banks, government banks, as well as other financial service providers such as E-Wallets. To comply with the law, they must report the deposits and the transfers of money and account information to the Revenue Department when any of the following events occur:

- The account has been deposited / accepted with transfers of 3,000 times a year. (counting the total balance of all accounts) or
- deposits / Transfers to and from 2 million-baht, number of times since 400 or more times per year.

If any bank finds that any account falls within any of the above 2 conditions, bank information will be sent to the Revenue Department, in order to bring it into the financial analysis system of the Revenue Department.

Such transactions do not include the transfer to own account of the same name and count only for receiving money excluding withdrawal.

Who hit it?

Any person who has been often deposited and transferred within account, especially, online marketing operators or businesses.

Enforcement and fine

- In case of the reporting person violates or fails to perform obligations. The Director-General has the power to order the reporting person to act correctly within the period.
- The person having the duty to report who does not comply with an order of the Director-General, the Director-General shall have the power to issue an order for a fine not exceeding one hundred thousand baht and a further fine not exceeding ten thousand baht per day at all times from the date on which violation occurs to the date on which a correct act is done.

E-Stamp Duty system

On 15 October 2020, the Revenue Department (“RD”) launched the "e-Stamp Duty" system. The RD said that the electronic instruments which shall be affixed with e-stamp duty via e-Stamp duty system, are not required to affix the paper stamp duty.

The electronic instruments which can pay stamp duty via e-Stamp duty system are as follows:

The following five categories of electronic instruments:

- hire of work agreement;
- loan agreements;
- power of attorney;
- proxies for voting at company’s meeting; and
- Guarantee contracts.

The electronic instruments can be made from 29 September 2020 to 31 December 2020

A person liable to pay stamp duty must submit the application for paying stamp duty (“called Aor.Sor. 9”) via e-Filing system at www.rd.go.th or

through the RD’s Application Programming Interface (“API”).

It should be noted that the application for paying stamp duty must be file either before executing the electronic instrument, or within 15 days of the date following the execution of electronic instrument.

Pre-Litigation Mediation System

The intention of the Amendment to the Civil Procedure Code (No.32) B.E.2563 (“Amendment”), which will be effective on November 7, 2020, is to promote “pre-litigation mediation system” as an alternative for civil disputes.

As to the section 20 tee of the Amendment, prior to the prosecution, the parties may submit the request to the court for appointing a mediator to settle the dispute. The compromise agreement between both parties shall correspond to the intent of the parties, honesty, fairness and not violating the law.

On the day of signing the compromise agreement, if such an agreement is deemed to have the final judgement, then the court will deliver the judgement upon the request of the parties, and section 138 will be applied. The order of the court issued under this section will be final. Moreover, there is no court fees for this pre-litigation mediation process.

DSDM law for telecommunication service business in Thailand

Direct Sale and Direct Marketing Act B.E. 2545 (2002) (“DSDM”), Section 20 provides that an operator of DS or DM business whose business model is to carry on direct sale or direct marketing must file an application for registration of DS and/or DM business with the Office of the Consumer Protection Board (“OCPB”).

With respect to a telecommunication business in Thailand, it is governed by the Office of the National Broadcasting and Telecommunications Commission (“NBTC”) under the Telecommunication Business Act B.E. 2544 (A.D. 2001) (“TBA”), which provides that an operator shall

acquire a telecommunication license from the NBTC and shall conform to regulations issued under TBA.

According to the Notification of NBTC Re: Rules and Procedure of Acquiring Telecommunication License B.E. 2563 (2020), it designates in *Section 12.17* that every Telecommunication Service licensee *is prohibited* to operate the business of direct sale relating to telecommunication. This means that telecommunication business operators shall not use direct sale as their method of sale. As a result, there is no telecommunication business operator in Thailand registered with the OCPB for the business of direct sale. On the other hand, direct marketing is not prohibited to operate. Therefore, some telecommunication service providers can use direct marketing as their business model registered with the OCPB.

Digital Assets (Cryptocurrencies and Digital Tokens) Due to the digital assets development, Digital Assets, including cryptocurrency and digital token, has been widely recognized and used as a mean of exchange for goods and services, as well as a tool to raise the funds and capital in the business.

In Thailand, there have been major developments by enacting two laws in order to provide the legal status and regulate the Initial Coin Offering (ICO), and exchange of cryptocurrency; (1.) Emergency Decree Amending the Revenue Code (No.19) B.E.2561 (A.D. 2018), and (2.) Emergency Decree on Digital Assets Business Operations B.E.2561 (A.D. 2018).

In addition, the digital assets could be considered as valuable assets which are subjected to be enforced in accordance to section 138 of Thai Civil and Commercial Code and Supreme Court Decision No.4311/2557. In order to do so, according to the section 279 and 282 of Civil Procedure Code of Thailand, it allows the receiver to have an access to an account and use it to transfer cryptocurrencies to the government's wallet. It may assume that digital

asset could be seized and confiscated. Since, the price of digital assets is volatile, according to section 332 of Civil Procedure Code of Thailand, which provides that liquidation must be proceeded without delay in case that it is likely to deteriorate, therefore, digital asset must be liquidated by the government receiver as soon as possible. Moreover, the valuation of digital assets is varied similar to stock price. Thus, it is necessary to do valuation of digital assets in Thailand.

The Emergency Decree also imposes that digital asset business and ICO portals are considered as "Financial Institution" under the Anti-Money Laundering Act in order to prevent the wrongful exploitation of digital assets as a channel for money laundering. To prevent the illegal transaction, the issuer of the digital tokens shall only accept Cryptocurrencies obtained from or deposited with operator of digital asset business regulated under the Emergency Decree. This is to ensure that such cryptocurrencies must be transacted from traceable sources.

Soft Loan for Non-Bank

The Ministerial Regulation on prescribing the D/E ratio, used in the business of the non-financial institution, in the case of the spread of the COVID-19, came into effect temporarily and became effective on September 28, 2020. The purpose is to provide Non-Bank an access to the soft loan with the low interest of the Government Saving Bank. It also stipulates the D/E ratio in which it shall not exceed 7 times of the capital of shareholders' equity used in the business that has been authorized under section 43 of the Foreign Business Act. This will be applied to Non-Bank that receives credit in order to increase the liquidity and take that credit to help business affected by COVID-19.

Non-Bank is able to have an access to soft loan easier without any concern on D/E ratio, this Ministerial regulation decreases cost of fund. This will benefit a debtor and credit will see more growth than it was expected because the soft loan charges

interest at the rate of 2 percent per annum. The criteria for lending shall not exceed 5 billion baht or shall not exceed 10 percent of the borrower's credit portfolio. The Ministry of Finance also proposed for allowing the Government Saving Bank to lend loans to Non-Bank, thus they can help the retail debtors by easing credit card loan, leasing, hire purchase, hire purchase of the motorcycle and car registration loan. For all of these reasons, the Ministry of Commerce therefore proposed the Ministerial Regulation in which it will be in effective until June 30, 2023.

Draft Notification of Trade Competition Commission regarding the regulation of the Online Food Delivery

Due to the popularity of the online food delivery platforms during COVID-19 epidemic, Trade Competition Commission ("TCC") has prepared notification to prevent unfair trade practice between the food delivery business operators and the restaurant business operators. There are four main rules as follows;

- 1) To prevent unfair collection without a proper rational of the Commission Fee or Gross Profit ("GP") including unreasonable rate and revenue sharing in addition to fees stipulated in the contract, Advertising Fee, Promotion Fee, and others unfair economic benefits;
- 2) To prevent unfair and limited condition of the trade business operation, for instance exclusive dealing;
- 3) To prevent unfair bargaining power of the food business delivery operators against the restaurant business operators, for instance , Rate Parity Clause, Credit Term, Refusal to deal/ Boycott or Delisting; and
- 4) To prevent other unfair trade practices.

However, after the Public Hearing of the draft, there are some significant issues that need to be adjusted in the near future.

Bill of Global Warming Act 2020

A Bill the Global Warming Act is nearly completed. The main objective of this Bill is to impose duties on every of private entrepreneurs, to collect the data on emission, and storage of the greenhouse gases, as well as reporting on the greenhouse gases reduction activities. The report must be submitted to the Ministries and then forwarded to be reviewed by the Office of Natural Resources and Environmental Policy and Planning ("ONEP")

In addition, the law also sets forth for disclosure of the data collected to the public, limited to the aggregate data of the amount of greenhouse gases. However, if such data may harm a specific person, he or she could request the Secretary-General of ONEP not to disclose it. This issue is still under consideration.

Tax Rebate for Shopping in Thailand. ("Tax Rebate ")

On 22 October 2020, the Ministerial Regulation No. 368 B.E. 2563 (A.D. 2020), regarding Shopping with Tax Rebate" scheme issued under the Revenue Code, it can be used as measure for the tax deduction up to 30,000 baht of the personal income tax. The reduction will be applied in the tax year as of March 2021. This is to promote the local products, local services , and SMEs businesses, stipulate the economy by purchases of products and uses of services by the middle-income group and upper middle-income group.

Tax Rebate was effective from 23 October 2020 to 31 December 2020. The tax payers can purchase any goods and use services provided by the registered operators (VAT operators) within the specified period, except for alcohol, government lottery, gases used for vehicles, and any vehicles including cars, motorbikes, and boats, hotel charges and airfares.

Maximum tax refund for an individual taxpayer

- For the net income of Baht 0-150,000 per year with the tax exemption, tax refund is not eligible For the net income from Baht

150,001 to Baht 300,000 per year with , 5% income tax rate, the maximum tax refund amount is up to 1,500 baht

- For the net income from 300,001 to 500,000 per year with 10% income tax rate, the maximum tax refund amount is up to 3,000 baht
- For the net income from Baht 500,001 to Baht 750,000 per year with 15% income tax rate, the maximum tax refund amount is up to 4,500 baht
- For the net income from Baht 750,001 to Baht 1,000,000 per year with 20% income tax rate, the maximum tax refund amount is up to 6,000 baht
- For the net income from Baht 1,000,001 to Baht 2,000,000 per year with 25% income tax rate, maximum tax refund amount is up to 7,500 baht
- For the net income from Baht 2,000,001 to Baht 5,000,000 per year with 30% income tax rate , the maximum tax refund amount is up to 9,000 baht
- For the net income from Baht 5,000,001 upwards per year with 35% income tax rate, the maximum tax refund amount is up to 10,500 baht.

Noted: if any person has already applied for Tax Rebate , he or she is unable to apply for 50% and 50% co-payment scheme (50% and 50% sharing scheme).

Should you have any question, please do not hesitate to contact us via info@bglballaw.com

