



ティーラックupp国際法律事務所

MR. PHONGNARIN RATANARANGSIKUL  
(DIRECTOR)

### **No. 171 : News Flash - Thai National Legislation Assembly Endorses Transfer Pricing Law**

Following the public hearing in mid-2017 and final approval by the Thai Cabinet on January 2018, Thailand's draft transfer pricing law sailed through the final reading session of the National Legislation Assembly on 27 September 2018. The law intends to create transparency, reduce profit shifting between related entities, and prevent double taxation issues in transfer pricing between related companies or enterprises.

Prior, tax authorities and taxpayers alike relied on the old warhorse Departmental Instruction (No. Paw 113/2545) as an interpretive guideline for their transfer pricing practices.

It is believed the new transfer pricing law will provide regulatory clarity over Thailand's transfer pricing regime.

#### ▪ **Key Features of the Approved Transfer Pricing Law**

- a) Section 71 bis empowers the Revenue Officer to adjust revenue and expenses of a company if the commercial and financial conditions for the transactions between the "related parties" are not determined according to the arm's length principle.
- b) "Related parties" means a company that directly or indirectly holds no less than a 50% stake in another company; or a company that directly or indirectly holds no less than a 50% stake in one company that, in turn, directly or indirectly holds no less than a 50% stake in another company; or a company that has relationships in terms of capital, management or control in another company rendering the other company unable operate independently.
- c) Section 71 ter requires the company under Section 71 bis, with the total revenue not less than 200 million to submit reports on transfer pricing (presumably in the prescribed form) within 150 days from the last day of the financial year.
- d) Within five years after the submission of the report on transfer pricing information, the Revenue Officers may notify the company to submit necessary documents or evidence in relation to its transfer pricing practices (including the Transfer Pricing Documentation Report) within 60 days. If necessary, the submission period may be

extended (but not beyond 120 days from the receipt of the notification.) First-time recipients can apply for an extension of the submission period of 180 days after the receipt of the notification.

- e) Failure to submit transfer pricing documentation (or where one submits incorrect information) without justification is punishable by a maximum penalty of Baht 200,000.

### Author's Note:

**i** Generally laws passed by the Parliament come into force after being signed by the King and published in the Royal Gazette – a process requiring about one month or so. The new transfer pricing law will be applicable from 1 January 2019 onwards. Hence, companies with their financial year ending on 31 December 2019 must submit information about their transfer pricing practices (presumably in the prescribed form) with their annual tax returns at the end of May 2020.

As such, taxpayers with related party transactions have about one year to prepare for a transfer pricing risk assessment and to identify sensible measures to control risk or contain possible damage.

## ティーラックupp国際法律事務所

ティーラックupp国際法律事務所 (DRK = Dherakupt International Law Office Ltd.)は、法律・税務部門において豊富な経験をつんだメンバーが揃った精鋭集団です。大手会計事務所出身のパートナーを揃え、国内・海外で学び働いたそれぞれの経験を元に、テラスグループの準メンバーとして、高レベルなサービスを提供しています。

### 【業務内容】

金融法関連	銀行、ファイナンスおよび金融・非金融会社の証券市場等、金融関連の法的アドバイスと書類作成
会社法関連	商法、民商法典、米国との条約、外国人事業法およびBOI、その他会社登録等の関連法令を踏まえた投資に対する法的アドバイス
企業合併と買収	企業合併と買収における実務サポート
一般的な法務サービス	不動産売買のアドバイスと交渉、就業規則の作成、雇用条件協約へのアドバイス、ジョイントベンチャー契約、リース契約などの各種契約書のチェックやドラフト作成
コンプライアンス	日常業務上のコンプライアンス、税還付、歳入局の要請による移転価格税制調査などのアドバイスとサポート
タックスプランニング	新事業や事業再構築に対するタックスプランニングとサポート
税務調査へのサポート	税務上の問題や潜在リスクの調査および解決策の提案、税還付へのサポート、関税調査や歳入局の税務調査へのサポート

その他、法務・税務関連を広くカバーしてまいりますので、ご相談がございましたらお気軽にお問い合わせください。



900 Tonson Tower Bldg., 12/F, Ploenchit Rd., Lumpini, Patumwan, Bangkok 10330  
Tel: 0-2252-1588 Fax: 0-2257-0440 WEB: www.drklaw.com



ティーラックupp国際法律事務所

MR. NUMPOL THONGUTHAISRI (PARTNER)

## No. 172 : Thailand Amended and Relaxed Conditions for the Smart Visa

Thailand's Smart Visa scheme has been in effect since 1st February of last year. Currently, fewer than expected numbers of foreigners have been utilizing the Smart Visa option. For this reason, the Board of Investment, along with representatives from the government and the private sectors, met to discuss improvements to this promising immigration scheme.

In response, Cabinet during its 6 November 2018 meeting, agreed to amend requirements and conditions for the Smart Visa to better serve the shared goal to attract more experts to Thailand. Several conditions of the Smart Visa have been relaxed and three major areas amended; namely: (1) expansion of eligible activities, (2) benefits for Smart Visa holders and (3) qualifications and conditions for Smart Visa applicants.

- (1) **Three New Activities:** These include services in alternative dispute resolution, science and technology-based human resource development, and environment and alternative energy management.
- (2) **Benefits for Smart Visa Holders:** The Immigration Office now offers Smart Visa holders fast-track services at all of Thailand's international airports, including fast lane access.
- (3) **Qualifications & Conditions for Smart Visa Applicants:** The monthly minimum income requirement for highly-skilled experts and senior executives, once THB 200,000, can now be calculated to include bonuses or other income in meeting that figure.

For experts in startups and retired experts, the minimum monthly income has been lowered to Baht 100,000 and to Baht 50,000 (down from Baht 200,000), respectively.

For startups, the minimum investment requirement for incubator programs or accelerator programs has been lowered to no less than Baht 5 million from Baht 20 million.

The new Smart Visa conditions for foreign startups have changed from a yearly visa upon first issuance with the possibility for two-year renewals to three new periods; namely, 6 months, 1 year and 2 years.

**Author's Note:**

*Smart Visa enjoys brisk support from both government and private sectors.*

*With the new measures, government hopes to improve an immigration framework that will assist startups activities in Thailand and offer greater convenience for foreign investors and experts already working or seeking to share their expertise in Thailand. The program is expected to have significant effect helping Thailand draw the kind of human resources needed in developing Thailand's SME and startups.*

*The upgrades may also better serve both government and private sectors as they help narrow and filter the eligibility of applicants.*

*The changes also seen as timely support for government's "Thailand 4.0" Policy- a new economic model to, among other things, create a value-based economy that is driven by innovation, technology and creativity, and to eradicate the middle-income trap. Companies that will incorporate in Thailand's new Eastern Economic Corridor (EEC) are also poised to benefit from these overhauls.*

**ティーラックupp国際法律事務所**

900 Tonson Tower Bldg., 12/F, Ploenchit Rd., Lumpini, Patumwan, Bangkok 10330  
Tel: 0-2252-1588 Fax: 0-2257-0440 WEB: www.drklaw.com

ティーラックupp国際法律事務所(DRK = Dherakupt International Law Office Ltd.)は、法律・税務部門において豊富な経験をつんだメンバーが揃った精鋭集団です。大手会計事務所出身のパートナーを揃え、国内・海外で学び働いたそれぞれの経験を元に、テラスグループの準メンバーとして、高レベルなサービスを提供しています。

**【業務内容】**

金融法関連	銀行、ファイナンスおよび金融・非金融会社の証券市場等、金融関連の法的アドバイスと書類作成
会社法関連	商法、民商法典、米国との条約、外国人事業法およびBOI、その他会社登録等の関連法令を踏まえた投資に対する法的アドバイス
企業合併と買収	企業合併と買収における実務サポート
一般的な法務サービス	不動産売買のアドバイスと交渉、就業規則の作成、雇用条件協約へのアドバイス、ジョイントベンチャー契約、リース契約などの各種契約書のチェックやドラフト作成
コンプライアンス	日常業務上のコンプライアンス、税還付、歳入局の要請による移転価格税制調査などのアドバイスとサポート
タックスプランニング	新事業や事業再構築に対するタックスプランニングとサポート
税務調査へのサポート	税務上の問題や潜在リスクの調査および解決策の提案、税還付へのサポート、関税調査や歳入局の税務調査へのサポート

その他、法務・税務関連を広くカバーしてまいりますので、ご相談がございましたらお気軽にお問い合わせください。



ティーラックupp国際法律事務所  
MR. PIYASAK CHOTIPRUK (PARTNER)

### No. 173 : New Burden for Direct Marketers

Government now requires direct marketing operators to place a guarantee with the Office of the Consumer Protection Board of Thailand (“OCPB”) in order to protect consumers. The Ministerial Regulation, issued under the Direct Sales and Direct Marketing Act B.E. 2545 (A.D. 2002), and already published in the Government Gazette, became effective on 20 November, 2018. The new law intends to enhance Thailand’s consumer protection framework.

Responsible parties, and the corresponding rates, are:

1. New Applicants	Type	Rate (Baht)
	Individual	5,000
	Juristic Person	25,000
2. Existing & Registered Direct Marker	Revenue per Year (Baht)	Rate (Baht)
	Individual Up to 25 million	5,000
	Juristic Person Up to 25 million	25,000
	25-50 million	50,000
	50-100 million	100,000
	More than 100 million	200,000

### What is Direct Marketing?

According to the Direct Sales and Direct Marketing Act, direct marketing is the marketing of goods where a seller communicates directly to consumers through a variety of media, including websites and mobile services. Thailand’s direct marketing law has been in effect since 2002.

### New Law, Newer Challenges

New applicants and existing, registered direct marketers face new compliance burdens. The

new law requires existing, registered- and new direct marketers to place a guarantee with the OCPB.

New applicants must place a guarantee within 30 days from the date of notification issued to them by the OCPB. Existing, registered direct marketers must place a guarantee within 90 days from the enforcement date of the Ministerial Regulation, i.e. by 17 February 2019.

Guarantees, according to the new law, can be in the form of cash, bank guarantees, government bonds, or State-enterprise bonds. New applicants are subject to a fixed-rate guarantee, while existing, registered direct marketers are subject to a revenue-based guarantee.

#### Author's Note:

**i** OCPB will send a letter to existing, registered direct marketing operators requesting the guarantee. The required sum will be based on the annual revenue of the particular operator. Operators must place the guarantee once they receive the OCPB letter, but no later than 17 February 2019.

*The guarantee will be used as compensation to consumers who have suffered damages from the operator's direct marketing activities. Once monies have been used to compensate consumers, the OCPB will notify the operators in writing to replenish the guarantee. The Operator must do so within 60 days from the notification date. Where the value of the damages suffered by consumers exceeds the guarantee placed, the direct marketer will be liable to those consumers for monies owed.*

*The guarantee and relevant other details must be in the form published by the OCPB. As of this publication, the form has not published in the Government Gazette.*

*From our experience, ambiguities arise where a website owner hires a service provider to operate its website, sell its goods to a service provider for retail to consumers, and directly contact consumers. In these cases, it may be unclear who operates as the direct marketer liable under this new law.*



#### ティーラックupp国際法律事務所

900 Tonson Tower Bldg., 12/F, Ploenchit Rd., Lumpini, Patumwan, Bangkok 10330  
Tel: 0-2252-1588 Fax: 0-2257-0440 WEB: [www.drklaw.com](http://www.drklaw.com)

ティーラックupp国際法律事務所 (DRK = Dherakupt International Law Office Ltd.)は、法律・税務部門において豊富な経験をつんだメンバーが揃った精鋭集団です。大手会計事務所出身のパートナーを揃え、国内・海外で学び働いたそれぞれの経験を元に、テラスグループの準メンバーとして、高レベルなサービスを提供しています。

---