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Official language is Thai language

The Revenue Department's Order

No. Por. 113/2545

On Transfer Pricing According to the Market Price for Corporate Income Tax

In order that Revenue Officials may use this Order as guidelines for the examination of, and giving advice to, taxpayers with regard to the calculation of net profit for corporate income tax under Section 65 of the Revenue Code, in the case of setting transfer price according to the market price, the Revenue Department issued orders as follows:

Article 1 A company or juristic partnership established under Thai law or foreign law according to Section 66 and Section 76 Bis of the Revenue Code shall calculate its net profit for the purpose of corporate income tax according to Section 65 of the Revenue Code by taking into account all revenue arising from or in consequence of the business carried on in an accounting period and deducting therefrom expenses in accordance with conditions prescribed in Sections 65 Bis and 65 Ter of the Revenue Code.

The computation of revenue and expenses in paragraph 1 shall follow accrual basis, whereby all revenue arising in any accounting period, even if not yet received in such accounting period, shall be regarded as revenue in that accounting period. All expenses that relate to such revenue, even if not yet paid in that accounting period, shall be included as expenses of such accounting period.

Article 2 In case that the company or juristic partnership under Article 1 transacts without compensation, or with compensation in an amount lower than market price without reasonable cause, or with expenses higher than market price without reasonable cause, and if the company or juristic partnership does not adjust its revenue or expense to the market price, the Assessment Official shall have the authority to adjust the revenue or expense to the market price.

“Market price” in paragraph 1 means the price of remuneration, service fee or interest that independent contracting parties determine in good faith commercially in case of transfer of goods, provision of service or lending of money, which is of the same characteristic, category or kinds as that between associated parties in question on the same date.

“Independent contracting parties” means contracting parties that are unrelated to each other in respect of the management, control or co-investment, either directly or indirectly.

Article 3 One of the following methods shall be adopted to determine the market price for the calculation of revenue and expense:

- (1) Comparable uncontrolled price method, whereby the consideration in return, service charge, or interest duly collected in trade are comparable to such considerations between independent contracting parties in the case of transfer of property, rendering of services, or lending of money, of the same category and type, and subject to the same or similar conditions.
- (2) Resale price method, whereby the considerations in return from the transfer of property or the service charge, which the buyer of goods or service from the seller has resold to other person who is an independent contracting party, is deducted by suitable amount of basic profit.

Suitable amount of basic profit shall be computed by multiplying the resale price of the said property or service by the rate of basic profit arising from the transfer of property or rendering of service of the same description or category and type to an independent contracting party.

Example

Company G sold goods to Company A, a related company at 50 Baht. Company A sold such goods to Company B, a third party company at 90 Baht. Supposing that the rate of basic profit sold to an independent contracting party in the market that sells goods of the same type is 20% of the resale price.

The market price that Company G shall sell to Company A can be computed as follows:

Resale price for third party companies = 90 Baht

Less basic profit (90 × 20%) = 18 Baht

Market price = 72 Baht

(3) Cost plus method, whereby the cost of the property or service sold to the buyer of goods or service is added with a suitable amount of basic profit.

The suitable amount of basic profit is computed by multiplying the cost of the said property or rendering of service in the same description or category or type to an independent contracting party.

Example

Company G sold goods to Company A, a related company at 75 Baht. The cost of goods sold is 50 Baht. Company K sold the same goods to Company B, a third party at 100 Baht and the cost of goods sold is 60 Baht. Therefore, the basic profit is 40% of the selling price or 66.67% of the cost of goods sold (40/60).

The market price that Company G shall sell to Company A can be computed as follows:

Cost of goods sold to related company = 50 Baht

Plus basic profit (50 x 66.67%) = 33.34 Baht

Market price = 83.34 Baht

(4) Other methods, whereby the methods under (1), (2) and (3) may not be applied to the computation of income or expenses to obtain market price of the considerations in return, service charge, or interest, other methods that an internationally accepted and are suitable according to the facts in trade concerning the transfer of property, rendering of service, or lending of money, may be used.

Article 4 In examining tax by the assessment officer regarding to the methods of computing income or expenses to obtain market price under Article 3 of a company or juristic partnership under Article 1, the assessment officer shall consider the following documents truly prepared by the company or juristic partnership in each step of transaction and which are kept at the office of the company or juristic partnership.

- (1) Document demonstrating the corporate structure and relationship with businesses in the same group, including the structure and business operation of each business
- (2) Budget, business plan and financial projections
- (3) Documents showing business strategies of the taxpayer as well as business reasons
- (4) Documents showing total sales, results of operation of the taxpayer as well as description of transaction made with the businesses in the same group
- (5) Documents showing reasons in arranging international transactions duly conducted with businesses in the same group
- (6) Policy on price fixing, profit-making ability of each product and marketing information, including share of profit of each business, taking into account the functions, the property and risks of each related business

(7) Documents showing reasons in choosing the price fixing method

(8) In the case where several price-fixing methods can be used, there shall be documents showing details of other methods other than those chosen under (7), and the reasons why those methods are not chosen, whereby such documents must be prepared at the time of making the decision to choose the method under (7)

(9) Documents that can be used as an evidence to show the basic principle and the grounds of negotiations of taxpayer for the transaction made with businesses in the same group

(10) Other documents related to price-fixing (if any)

“Businesses in the same group” under paragraph one means business in the group of companies or juristic partnerships that have the relationship with each other in respect of management, control, or joint investment, either directly or indirectly.

In the case the company or juristic partnership under Article 1 has prepared the documents under paragraph one with sufficient details to show that the method of computation of income or expense to obtain the market price under Article 3 of the company or juristic partnership is a suitable and correct method, the assessment officer shall base his consideration according to the said method of computation of income or expense to obtain the market price of the company or juristic partnership.

Article 5 In the case the company or juristic partnership under Article 1 wishes to make an agreement on the fixing of price in advance with the Revenue Department in regard to a transaction conducted with its contracting party, the company or juristic partnership shall submit an application for advanced pricing agreement in writing, together with related documents, to the Director-General of the Revenue Department, so that the Director-General may then prescribe bases, procedures and conditions to be complied with by the said company or juristic partnership under such agreement.

Ordered this 7th day of February 2001

Ordered this 16th day of May 2002

(Supparat Kawatkul)

Director-General of the Revenue Department

(Ref.: Government Gazette, Volume 119, Part 51 Ngor., of 25th June 2002)