

Tax and Legal Newsletter

PKF

New Guidelines: Individual shareholders can cause companies to be related

Thailand follows the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations ('OECD Guidelines'), and as such, the Thai Revenue Code ('TRC') places reporting obligations on certain companies (and juristic partnerships) which have related party transactions. These can include a Transfer Pricing Disclosure Form, Local File, and Country by Country reporting. It is therefore critical that a company (or juristic partnership) understands if it has a related party, or related parties, in order to determine whether it falls within the transfer pricing reporting obligations.

Under Section 71 bis TRC, a company is regarded as a related party of another company if:

- (1) It directly or indirectly owns 50% or more of the total shares of the other company;
- (2) A shareholder owns at least 50% of the total equity of the company either directly or indirectly and 50% of the total equity of the other company either directly or indirectly; and,
- (3) It has a dependent relationship with the other company in terms of capital, management, or control, to the extent that one entity cannot be operated independently from the other.

The Thai Revenue Department ("TRD") assists taxpayers in providing explanations and examples of what constitutes a related party on its website. In saying this, the past explanations and examples have tended to focus just on companies or juristic partnerships and there has been uncertainty when considering shareholders who were individuals and not companies or juristic partnerships. As such, the TRD has now provided two further examples which consider the shareholding relationship of individuals and whether, by considering such relationships, companies (and juristic partnerships) would be related parties. The new examples can be found on the TRD website as Example 13 and Example 14, and we provide a brief overview of both below.

Example A:

Shareholder	Shareholding in Company A	Shareholding in Company B
Company X (Overseas)	10%	50%
Mr. A	73%	17%
Mr. B	17%	33%
Total	100%	100%

In considering the above table, Company X owns 10% of Company A and 50% of Company B.

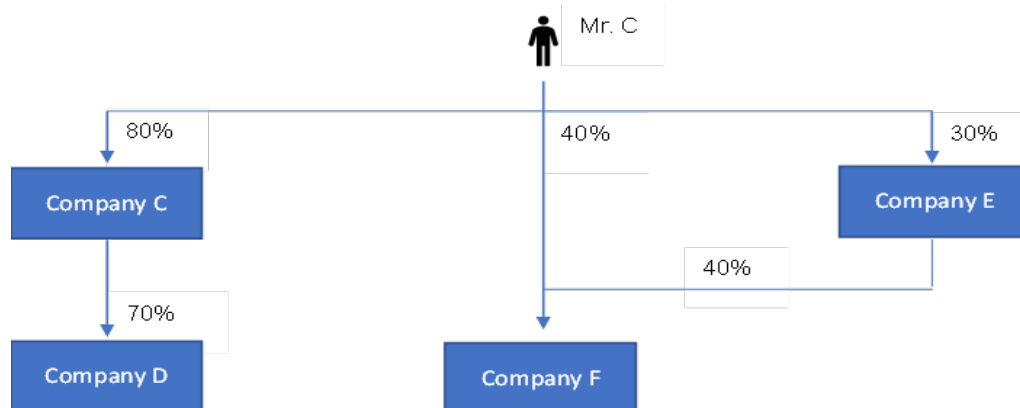
If only a corporate ownership relationship was considered, then companies A and B would not be considered related parties. However, you are required to consider all the shareholders, including individuals, that are shareholders of both companies i.e., to consider the same group of shareholders for both companies and whether they have a combined shareholding of 50% or more in each.

Tax and Legal Newsletter

PKF

Consequently, in considering all the shareholders, individuals and corporate, Company A and Company B would be considered related parties as, including the individuals (Mr. A and Mr. B), the shareholding 'group' which holds shares in both companies has a combined shareholding of at least 50%.

Example B:



In the diagram above, Mr. C directly owns 80% of the shares of Company C and 40% of the shares of Company F. Only considering the directly held shares, we would conclude that Mr. C does not own 50% or more shares in both companies, and therefore they are not related parties.

However, we must also consider the percentage of shares he holds indirectly in Company F to establish his total shareholding in that company. Therefore, in addition to the direct holding of 40% we must also include the shareholding indirectly held through Company E, which is 30% of the shares that Company E owns in Company F i.e., $30\% \times 40\% = 12\%$. Therefore directly, and indirectly, Mr. C owns $(40\% + 12\%)$ 52% of Company F, and considered with the 80% shareholding of Company C, (since both companies are owned 50% or more by Mr. C), they are related parties.

Mr. C also indirectly owns shares in Company D by way of his 80% shareholding in Company C, which is 80% of the shares that Company C owns in Company D i.e., $80\% \times 70\% = 56\%$. Therefore, as Mr. C either directly or indirectly owns 50% or more of the total shares of each company, Company C, Company D, and Company F will all be considered as related parties.

Observations from PKF Thailand

Examples A and B additionally provided on the TRD website have been welcomed because they demonstrate how individuals who are shareholders can also have an impact on determining whether companies are related parties to one another. Previous examples tended to focus on company shareholders only and so the position with respect to individuals was not clear.



Tax and Legal Newsletter



PKF

In view of the additional guidance to determine a related party, we highly recommend that each company carefully reviews its shareholding structure, and its list of considered related parties, against the shareholding percentages of both individuals and companies, and 'same group' shareholders, and confirms that all the related parties have been captured and its list of related parties is up to date.

If you require any assistance with any transfer pricing (TP) or related party matter, or assistance with completing a TP Disclosure Form, or providing a TP Local File, please do reach out and email one of our transfer pricing specialists.

Philip Bond International Tax Partner Head of Tax philip.bond@pkf.com	Theeradaje Tansuwanrat Tax Partner Tax Compliance and Advisory Services Theeradaje.t@pkf.com	Thitayakorn Thirati Associate Director Transfer Pricing thitayakorn.t@pkf.com
--	--	--