

Transfer Pricing Country Summary Thailand

September 2018

Legislation

Existence of Transfer Pricing Laws/Guidelines

The legal framework for transfer pricing was introduced by the Revenue Department, in Section 65 bis (4) (7), Section 65 ter, and Section 70 of the Thai Revenue Code, Double Tax Agreements between Thailand and other countries and the Standard Accounting No. 37 and 47.

There are no specific transfer pricing provisions under the Revenue Code. However, assessment officers can adjust the net profits by applying some general provisions of the Revenue Code. Examples of such provisions include:

Section 65 bis (4): assessment officer has the power to assess transactions at market value;

Section 65 ter (13): expenses not exclusively expended for profit making are to be disallowed;

Section 65 ter (14): expenses not exclusively expended for the purpose of a business in Thailand are to be disallowed

On May 16, 2002, transfer pricing guidelines were published by the Thai Revenue Department, under the Departmental Instruction No. Paw. 113/2545, providing guidance on the determination of the market price, methodology in calculating the market price, establishment of the market price and the required transfer pricing documents. In general, Thailand follows the OECD Transfer Pricing Guidelines in general.

On 3 January 2018, the Thai Cabinet approved the draft transfer pricing act (the Draft Act) that will add specific transfer pricing provisions to the Revenue Code. This approval follows a public hearing held in July 2017 on the first draft Act that was approved in principle in May 2015.

Definition of Related Party

The Departmental Instruction No. Paw. 113/2545 adopts the OECD Guidelines regarding the definition of the related party. Specifically, a related party is defined as:

- I. A legal entity that either directly or indirectly holds 50% or more of the total shares of another legal entity;
- II. A legal entity of which 50% or more of its total shares are held either directly or indirectly by a shareholder or partner that also directly or indirectly holds 50% or more of total shares of another legal entity; or

- III. A legal entity that has a dependent relationship with another legal entity in terms of capital, management, or control, to the extent that one entity cannot be operated independently from the other.

Transfer Pricing Scrutiny

Tax audit on transfer pricing is common in Thailand. A company can be audited in terms of transfer pricing if it fails to disclose required and/or related-party transaction documents or does not meet the requirement for transfer pricing filing to the tax authority. Since 2006, the Thai Revenue Department has enforced more audit activities in transfer pricing.

In general, the Thai Revenue Department conducts company visits to examine business operations. If any transactions triggering further scrutiny, such as the deductibility of expenses resulting from intragroup transactions, further verification will be carried out.

The main issues that could lead to a transfer pricing investigation are: net operating loss position, profit margins that differ substantially from other comparable industries; and high intercompany charges for management services, royalties, intangible assets, or cost allocation, etc.

Authority to assess transfer pricing adjustments

Taxable income and deductions associated in relation to related-party transactions that were not at arm's length are granted full authority to be adjusted by tax authorities. The tax authority have the authority to request additional documents within five years of the submission deadline.

Taxpayers deemed with overpaid taxes on related-party transactions due to a transfer-pricing assessment will be relieved the double tax that results from such adjustments. Thereby, taxpayers have the right to file a tax refund claim within 60 days after receiving notification of the tax assessment results. They are also able to hand in 3 years of the deadline for filing an annual corporate income tax return.

Transfer Pricing Penalties

There is no specific transfer pricing penalty. General Corporate Tax penalty scheme is applied. A penalty of up to 100 percent of the additional corporate tax and interest surcharges of 1.5 percent per month may apply on outstanding tax. No interest is charged on penalties. Tax underpayment will be charged with the normal corporate tax rate of 20%.

Failure to provide the required transfer pricing disclosure statement or the filing of incomplete or false statements in the disclosure statement (and supporting documents) will result in penalties of Baht200,000 (US\$6,200).

A 100 percent tax penalty can be charged on the additional tax payable, if any. This penalty can be reduced up to 50% or even waived if the assessment officer is of the opinion that the taxpayer had no intention of evading taxes, and has cooperated fully during the tax audit.

Advance Pricing Agreement (APA)

Only Bilateral APA is accepted. The effective period of an APA is between 3 to 5 accounting periods. In essence, the last day of the first accounting period must be within or after the date of the submission of APA application.

To apply for an APA, a number of documentations are required. The detailed description is stated under the guidance on APA process of the Thai Revenue Department. Any documents related to APA must be provided by the taxpayer to the Revenue Department within 7 working days from the date the documentation have been delivered to the foreign tax authority.

The duration to conclude a bilateral APA is within 3 months since the date of filing the request. If the taxpayer wishes to withdraw the APA application, it must do so via a written request before the APA becomes effective. In some cases, the Revenue Department can terminate the APA because it is extremely time-consuming in Thailand.

No fee is charged on APA.

Documentation and Disclosure Requirements

Tax Return Disclosures

No disclosure of the existence or non-existence of transfer pricing documentation is required to be submitted with a tax return. However, when Under the Thai Federation of Accounting Professions and Securities and Exchange Commission (SEC) regulations, listed companies must disclose the related party transactions in their annual reports. Non-listed companies are not required to disclose related party transactions in their annual reports.

Taxpayers who are deemed to be related parties under the definition and have annual income lower than 30 million Baht (US\$930,000), or higher based on the Ministerial Regulations to be released with the Act, will be required to prepare and file a transfer-pricing disclosure form together with its annual corporate income tax return within 150 days of the last date of the accounting period. Taxpayers are required to prepare and file a disclosure statement with the annual corporate income tax return. The required statement must include, but is not limited to, descriptions of relationships of relevant related parties in terms of ownership, management or control and the total related-party value(s). Other information which may be prescribed in a notification issued can also be required by the Director-General of the Revenue Department.

Level of Documentation

The following documents are required under the Departmental Instruction No. Paw. 113/2545:

1. Documentation indicating the structure and relationship between business entities within the same group, including the structure and nature of business carried on by each entity;
2. Budgets, business plans and financial projections;
3. Documentation indicating taxpayers' business strategies as well as the reasons for adopting such strategies;
4. Documentation indicating sales and operating results and the nature of its transactions with business entities within the same group;
5. Documentation indicating the reasons for entering into international transactions with business entities within the same group;
6. Pricing policies, product profitability, relevant market information and profit sharing of each business entity. Consideration should be given to functions performed, asset utilized and risks assumed of the related business entities;
7. Documentation supporting selection of a particular pricing method;
8. Where several methods are considered, documentation indicating details of the methods apart from the method stated in 7 and the reasons for rejection of these methods. These documents should be created at the same time the decision is made to select the method in 7;
9. Documentation used as evidence indicating the negotiation positions taken by the taxpayer in relation to the transaction with business entities within the same group and the basis for those negotiating positions;
10. Other related documentation in determining the transfer price (if any).

Record Keeping

The documentation should be contemporaneous.

Language for Documentation

APA documents must be in Thai. English is also accepted unless otherwise required by the tax officers to be translated in Thai.

Small and Medium Sized Enterprises (SMEs)

There are no specific rules concerning Small and Medium Enterprises.

Deadline to Prepare Documentation

There is no requirement on periodic document preparation; however, documents related to transfer pricing must be updated at the time of transfer pricing transactions. Thus, the preparation should be contemporaneous and should be made available when requested by tax authorities.

Deadline to Submit Documentation

When requested by the tax authorities, transfer pricing documents must be submitted within 60 days, or the extended period of 120 days.

Statute Of Limitations

For assessments of transfer pricing adjustment, the statute of limitations is from five years from the filing of the tax return depending on falsely reported or inadequate information in this return.

Transfer Pricing Methods

The following methods are accepted:

- Comparable uncontrolled price (CUP) method
- Resale price method
- Cost plus method
- Profit split method
- Transactional net margin (TNMM) method

The most appropriate method to calculate the market price should be selected.

Comparables

Financial information of companies is available on the database portal as comparables. Foreign comparables are also accepted at tax authorities, if the Thai database is not sufficient. Local comparables are preferred though.

<http://www.rd.go.th/publish/335.0.html>: everything is published in 2012.

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