

A closer look at Thailand's TP landscape

While clarity on the application of Thailand's TP laws has now largely been achieved with the issuance of supporting regulations in the past year, a few pieces of the jigsaw still remain before the picture is complete, explains [Stuart Simons](#) of [Deloitte Thailand](#).

Transfer pricing (TP) laws provide power to the Thai tax authority to reassess the taxable income and expenses of related party transaction(s), ensuring that they are consistent with the arm's-length principle for corporate tax purposes. The arm's-length principle requires that the pricing of related party transactions be based on the pricing that would have been agreed upon in transactions between independent parties. The law is effective for accounting periods commencing on or after January 1 2019.

Related parties

A related party is defined in the Thai TP laws as:

- A juristic person who holds shares in another juristic person, directly or indirectly, with no less than 50% of the total equity;
- Two juristic persons with the same shareholder who directly or indirectly holds no less than 50% of the total equity in these entities; or
- Juristic persons who are related by way of shareholding, management, or control whereby one juristic person is not able to act independently from one other juristic person as defined in the Ministerial Regulation.

Interpretation of paragraph (3) of the related party definition still requires clarification from supporting regulations. The Thai tax authority has indicated that only paragraphs (1) and (2) of the definition will be applied in the meantime. That is, only companies with shareholding relationship, direct or indirect, of 50% or more will be regarded as related.

TP methods

The Thai tax authority has provided a list of five acceptable TP methods, together with the relevant financial indicator for each, which should be considered in determining the most appropriate method for pricing related party transactions. These are consistent with the recognised

OECD TP methods. The Thai tax authority also allows for the adoption of other TP methods not listed. However, it will be necessary to demonstrate that none of the listed TP methods could be applied before adopting another method. Also, if a non-listed method is used, the company or partnership must notify the Thai tax authority in writing with a preliminary explanation of the method in the year in which the transaction takes place.

Benchmarking and arm's-length range

The Thai tax authority has indicated that it will consider comparable information from transactions both within and outside Thailand, which suggests that it accepts foreign comparables in certain situations. It has not, however, provided further guidance on what situations foreign comparables will be accepted in. Based on current Thai tax authority practice, we expect that foreign comparables will be accepted where the tested party is a foreign entity e.g. where a foreign company is the provider of management services to its related Thai company. For local tested parties, there is a strong preference for local comparables.

An arm's-length range will be determined based on the relevant financial indicator for the selected TP method from the comparable independent transactions. The Thai tax authority has not specified which data points define the range (e.g., minimum to maximum or interquartile range). If the results for the related party transaction fall outside the arm's-length range, the Thai tax authority has the power to adjust the related party transaction to the arm's-length range. The Thai tax authority has not mentioned a specific point in the range, which the adjustment will be made to, but does recognise that the adjustment should be made to a point which best reflects the circumstances.

TP disclosure form

A company or partnership with revenue of not less than Thai Baht (THB)200 million (approximately \$6.3 million) is required to prepare a TP disclosure form for submission to the Thai tax authority within 150 days after its accounting year end. The form requires certain information, including:

- List of all of the taxpayer's related companies or partnerships located in and outside Thailand with an indication of whether they had transactions with the taxpayer or not
- Value of specified related party transactions between the taxpayer and its related parties located in and outside Thailand
- Indication of whether the taxpayer had a business restructuring involving related parties during the accounting period and if so the impact on its financials
- Commencing with the 2021 accounting period, the taxpayer is required to confirm whether it is part of an MNE (multinational enterprise) group for country-by-country reporting (CbCR) purposes. If so, it is required

to provide the name and country of residence of the reporting entity.

The requirement to provide a list of all of an MNE's related parties whether or not they have transactions with the Thai entity is an onerous compliance obligation to be shouldered by the Thai entity. It is also important to note that the TP laws apply to both cross-border and domestic related party transactions.

Local file

The Thai tax authority, upon the Director-General's approval, has the power to request additional documents or evidence with respect to the related party transactions within five years after the company files the TP disclosure form above. The TP documentation will be split into two files: (1) master file, and (2) local file, which is consistent with the approach adopted by the OECD as part of its BEPS initiative. Whilst the supporting regulations for the local file were issued and effective for 2021 and subsequent accounting periods, we still await the supporting regulations for master files.

Consistency with OECD local file

The required contents for local files are generally consistent with the suggested local file contents provided in the OECD Transfer Pricing Guidelines (2022). Some notable additions to the OECD suggested contents include:

- A value chain analysis
- Summary of the main provisions of the agreements for material related party transactions – the OECD only suggests that copies of the agreement be provided
- In addition to reasons for the selection of the appropriate TP method(s), it is necessary to also provide reasons for why the other TP methods were not adopted

Materiality

Only material related party transactions are required to be analysed in detail in the local file. As group companies will typically have a number of different types of transactions with multiple related parties, the question of which transactions should be analysed is important in defining the scope of the work to be performed. There are also potential penalties for preparing incomplete local files. There is, however, no definition of materiality in the notification or elsewhere in the TP laws. It therefore remains to be seen whether the Thai tax authority will provide formal guidance on their interpretation of what constitutes materiality.

Exemption from benchmarking analysis requirement

A Thai company that does not have more than THB500 million operating revenues, has no carry forward tax losses, no cross-border transactions with related parties and transacts with related parties, which are subject to the same corporate

tax rate, may choose not to perform benchmarking analysis. It is, however, required to prepare the local file including the other required information. Interestingly, it is still required to select an appropriate TP method for its material related party transactions. Given that the process of selecting an appropriate TP method, itself, technically requires a benchmarking analysis it will be difficult to fully comply with the requirements with the performance of this analysis.

In addition, entities that have obtained an advance pricing arrangement (APA) between Thailand and other country(ies), will not be required to prepare benchmarking analysis for those related party transactions which are covered under the APA for the same accounting period. However, entities which have obtained an APA will still be required to prepare the local file with the required information apart from the benchmarking study for the covered transactions. Again, it is questionable whether it should be necessary for the entity to also have to present the TP method selection for the covered transactions under the APA in the local file.

If an entity that has obtained an APA also has other (material) related party transaction(s), which are not covered under the APA, it will be required to prepare the benchmarking analysis for these transactions for the local file.

Language

The local file is required to be submitted to the Thai tax authority in the Thai language. This will create an additional compliance obligation for foreign MNEs operating in Thailand who will necessarily need to prepare both English and Thai versions of the documentation.

Submission deadline and fines

A company has 180 days to submit the TP documentation from the first notice letter from the Thai tax authority, and 60 days for subsequent notice letters. In the case of special circumstances, the Director-General may extend the time limit from 60 days up to 120 days. Apart from the first notice, it would still be important to prepare the documents on a timely basis after year end as the 60-day time limit is unlikely to be sufficient to ensure that the document is prepared with input from all relevant parties, including the parent company.

Failure to file the report and/or additional documents/evidence or submitting incomplete/incorrect documents or evidence without justifiable reasons under the law will result in the taxpayer being subject to a fine not exceeding THB200,000.

CbC reporting

As a third tier of the TP documentation, the Thai tax authority requires submission of a country-by-country report (CbCR) by certain local entities. The first year of enforcement is for accounting periods commencing on or



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Stuart has been a regular speaker at local seminars on TP issues and has contributed articles to a number of publications, including *International Tax Review*, *Bangkok Post* and *Kokusai Zeimu* (Japan). He graduated from the University of Western Australia with a Bachelor of Commerce and is a Chartered Financial Analyst.

after January 1 2021 and for MNE groups with consolidated revenues that are greater than THB28 billion (approximately \$875 million).

The filing date for CbCR for a Thai ultimate parent entity or surrogate parent of an MNE group is 12 months after the close of the accounting period. For other local entities, which are required to file the CbCR, for instance where the ultimate parent company is resident of a country that does not have a competent authority agreement for exchange of information with Thailand, the CbCR will be due within 60 days of receipt of a written request from the Thai tax authority tax assessment officer.

Thailand intends to enter into the Multilateral Competent Authority Agreement on the exchange of CbCR (MCAA CbCR) during 2022. The signing of the MCAA CbCR will enable Thailand to efficiently establish a network of exchange relationships for the automatic exchange of CbCR.

There is no specific penalty regime for the failure to comply with the CbCR reporting requirements. A general

fine of THB2,000 would apply for failure to lodge the CbCR by the due date.

The CbCR online system is now operational at the Thai tax authority website. The system supports the lodgement of the CbCR XML file, CbCR notification and notification letter of the surrogate parent entity.

Where there are multiple entities in the same MNE group in Thailand, it is only necessary for one entity to register with the online system to submit the CbCR notification and other required information.

Whilst the CbCR regulations do not refer to the requirement to submit the CbCR notification, this is required as part of the CbCR system. The CbCR notification requirement applies to Thai companies or juristic partnerships, which are part of a MNE group for the purposes of the CbCR laws. Significantly, there is no revenue threshold for the local entity in determining this requirement. The registered entity will need to provide information in the CbCR notification in relation to the ultimate parent entity,

surrogate parent entity (if any) and the list of local entities covered by the notification.

As the CbCR notification is not referred to in any regulations, there is no statutory deadline specified. However, the Thai tax authority has indicated that this notification should be submitted before the deadline for the submission of the CbCR (i.e., 12 months after end of the accounting period). There is also no fine imposed for failure to provide the notification.

Conclusion

As the specific Thai TP laws have been effective for a few years and most of the supporting regulations have been issued, taxpayers should double their efforts to ensure TP compliance.

The Thai tax authority has already increased its audit activity to enforce TP rules. While the ongoing COVID-19 pandemic may temper how aggressively they enforce the rules for the last few years, it is certainly a looming reality as profitability levels return to normal.