



## TP Alert

# Thai Country-by-Country Reporting Rules Released

The Thai Revenue Department has issued Notification of the Director-General of the Revenue Department on Income Tax (No. 408) (“The Notification”) to set out Country-by-Country Reporting (CbCR) obligations for multinational enterprise groups (MNE groups) headquartered and/or operating in Thailand.

### What are CbCR rules?

Action 13 of the G20/OECD’s Base Erosion and Profit Shifting (BEPS) Project recommended that large multinational groups should be required to prepare and file with the tax authorities a new type of annual return – a Country-by-Country report.

The CbCR provides tax authorities with visibility over how key elements of a multinational group’s financial results break down by tax jurisdiction. The names and main business activities of the group in each jurisdiction are included.

CbCR is a BEPS minimum standard requirement. All OECD and G20 countries and all countries participating in the BEPS “Inclusive Framework” committed to implementation of CbCR to tax authorities. As a participant to the BEPS Inclusive Framework, Thailand has now satisfied its commitment to introduce these rules.

### When are the Thai CbCR rules effective?

The rules are effective for financial years commencing on or after 1 January 2021.

## Which entities are required to lodge CbCR?

The requirement to lodge a CbCR with the Thai Revenue Department applies to the following MNE groups:

- Those that have consolidated annual revenues of at least THB 28,000 million in the financial year immediately preceding the reporting period (or annualized revenues of at least this amount for financial years which are not a full 12 month period), based on the consolidated financial statements of that preceding year; and
- if the ultimate parent entity (UPE) of the MNE group is tax resident in Thailand, or
- if a Thai entity of the MNE group (with its UPE outside Thailand) is nominated as the Surrogate Parent Entity (SPE) to file the CbCR on behalf of the UPE in the following circumstances:
  - The country of tax residency of the UPE does not have applicable CbCR filing requirements;
  - The UPE has appointed the Thai entity as the SPE in writing and notified the appointment to the Thai Revenue Department; and
  - The accounting period of the SPE is the same as the UPE, or
- An entity carrying on business in Thailand, which is neither the UPE or SPE, where:
  - The UPE is not required to file a CbCR in its country of tax residence;
  - The UPE is a tax resident of a country that does not have a competent authority agreement on exchange of information with Thailand effective for the relevant accounting period; or
  - There is an obstacle to the exchange of the CbCR between the countries.

Such an entity may be exempt from lodging the CbCR with the Thai Revenue Department if the following conditions are satisfied:

- The UPE has appointed a SPE to file the CbCR under the laws in the SPE's country of tax residency;
- The SPE's country of tax residency has a competent authority agreement on exchange of information with Thailand which was in force at the time of the last prescribed date for submitting the CbCR;
- The SPE's country of tax residency has not notified any obstacle to the exchange of the CbCR to the Thai Revenue Department;
- The SPE has notified the competent authority of the country it is a tax resident regarding its surrogate status; and
- The Thai entity has notified the Thai Revenue Department regarding an appointment of the SPE.

## What is an Ultimate Parent Entity?

An UPE is either:

1. An entity that has direct or indirect control over other companies or juristic partnerships under the same MNE group which:
  - has an obligation to prepare consolidated financial statements in accordance with the generally accepted accounting principles of its country of tax residence, or
  - would be required to prepare consolidated financial statements if it is traded on a stock exchange in its country of tax residence or Thailand; and
  - is not under the control of any other company or juristic partnership of the MNE group; or

2. An entity which does not fall under (1) above but carries out business through a permanent establishment in other countries or economic zones.

### **How and when will notifications need to be made?**

It will be necessary for entities carrying on business in Thailand to notify the Thai Revenue Department of certain positions adopted in relation to their CbCR filings. For example, if they are not the reporting entity, then which entity (UPE or SPE) is the reporting entity and what is their country of residence. The Notification does not address the specific details of the form and timeline for notifying the Thai Revenue Department and we expect that guidance will be provided at a later stage.

### **What are the filing requirements?**

The CbCR must be submitted in English, together with the annual corporate tax return (Form PND 50), which is due 150 days after the end of the accounting period. (i.e. for fiscal year ending 31 December 2021, the report should be submitted by 30th May 2022).

This is, however, not in accordance with the suggested lodgment timeline under the OECD guidance, which indicates 12 months after the end of the relevant accounting year. Most countries have adopted this 12-month period. Therefore, this provides the MNE with very tight timeline to prepare and submit the CbCR to the Thai Revenue Department. We understand, however, that the Thai Revenue is considering another Notification to extend the lodgment date to 12 months.

### **What are the contents and format of the CbCR?**

The content and format of the CbCR is in line with the OECD CbCR guidance and the CbCR is required to be lodged in the CbCR XML Schema. It includes aggregate information related to the amount of revenue, profit (loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE group operates.

The Notification does not provide any guidance on how to complete the CbCR and it is not clear whether this will be provided by the Thai Revenue Department. In the meantime, the OECD guidance on the CbCR may be used as a reference.

### **What are the penalties of non-compliance?**

There is no specific penalty regime for the failure to comply with the CbCR reporting requirements. A general fine of THB 2,000 would apply for failure to lodge the CbCR by the due date. This is compared to the maximum fine of THB 200,000 for failure to lodge or lodgment of incorrect/incomplete TP disclosure form/local TP documentation file.

### **How will the CbCR be shared between Thailand and other countries?**

Thailand intends to enter into the Multilateral Competent Authority Agreement on the exchange of CbCR ("MCAA CbCR") soon. As of August 2021, there were 91 signatories to the MCAA CbCR. The signing of the MCAA CbCR will enable Thailand to efficiently establish a network of exchange relationships for the automatic exchange of CbCR. It provides a standardized and efficient mechanism for the automatic exchange of CbCR.

## What next?

The release of the CbCR rules represents a significant advance in meeting Thailand's obligation as a participant in OECD/G20 BEPS Inclusive Framework. The CbCR will provide the Thai Revenue Department with an additional tool in assessing transfer pricing and other BEPS-related risks for the purposes of targeting entities for audit, but time will tell how they will use and disseminate this information within the Thai Revenue Department in practice. There are, however, still a number of actions required by the Thai Revenue Department to fully implement the CbCR obligation, including guidance on the notifications required, potential extension of the filing deadline for the CbCR submission and signing and implementation of the MCAA CbCR. Furthermore, the Thai Revenue Department will need to ensure that they have in place and enforce measures to protect the confidentiality of information contained in the CbCR. Such protections include limiting the use of the information and rules on the persons to whom the information should be disclosed.

In the meantime, entities operating in Thailand should study the requirements and determine the potential impact on them, including the filing position to be adopted. These may differ between Thai MNEs and foreign MNEs operating in Thailand.

### *Thai MNEs*

Thai MNEs meeting the revenue threshold will likely already have commenced submitting CbCR in countries which have adopted the reporting requirement for prior years. They therefore may have already appointed a SPE to submit the CbCR in another country. With the introduction of the CbCR rules in Thailand, the reporting entity may change from the SPE to the UPE in Thailand. It would therefore be necessary to ensure that all relevant jurisdictions are notified of the change of the MNE's filing country. These Thai MNEs will also need to review the filing obligations of the MNE in other jurisdictions based on Thailand's exchange relationships through its MCAA CbCR status.

### *Foreign MNEs*

Thai subsidiaries of foreign MNEs where the UPE is located outside of Thailand will need to assess and confirm whether Thailand has an exchange relationship with the country of tax residence of the UPE through the MCAA CbCR status. If it does, then the Thai subsidiary's obligation may be limited to notifying the Thai Revenue Department of the reporting entity's name and tax residency. If there is no exchange relationship between Thailand and the country of tax residence of the UPE (or SPE), then the Thai subsidiary will be required to submit the CbCR to the Thai Revenue Department by the due date.

Given that the CbCR includes information which could potentially be used by the tax authorities to assess the transfer pricing and other BEPS-related risks for the MNE in their jurisdiction, it's important when preparing the CbCR that the information is consistent with the positions and characterizations adopted in the Master File and Local TP documentation file. If the CbCR suggests that more value should be sitting in Thailand, then this may give rise to some additional scrutiny from the Thai Revenue Department and potential challenge.

Please find an unofficial translation of the Notification attached [here](#).

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