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Latest update on transfer pricing developments in Thailand
泰国转让定价最新动态

Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (CbC MCAA)

《关于国别报告信息交换的多边主管当局协议》(以下简称“CbC MCAA”)

On 18th of October 2022, the Thai Cabinet approved in principle for Thailand to join the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (“CbC MCAA”) thereby enhancing the exchange of the Country-by-Country Reports (“CbCR”) to meet the international standards published by the Organisation for Economic Co-operation and Development (“OECD”).

2022年10月18日，泰国内阁原则性批准了泰国加入《关于国别报告信息交换的多边主管当局协议》(以下简称“CbC MCAA”)，加强国别报告(以下简称“CbCR”)的交换，以满足经济合作与发展组织(以下简称“OECD”)发布的国际标准。

The Thai Revenue Department issued Notification of the Director-General of the Revenue Department on Income Tax (No. 408) in 2021 to set out (CbCR) obligations for multinational enterprise groups (“MNE groups”) headquartered and/or operating in Thailand.

泰国税务局于2021年发布了《税务局局长关于所得税的通知(第408号)》，就总部设立在泰国和/或在泰国运营的跨国企业集团(以下简称“MNE 集团”)的CbCR义务进行了规定。

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

税务机关通过 CbCR 可以了解 MNE 集团在各税务辖区的关键财务指标情况，以及每个辖区的集团实体名称和主要业务活动。

A key mechanism in making the CbCR rules work efficiently and effectively is the ability for the CbCR to be automatically exchanged between tax authorities as opposed to MNE groups filing CbCR with the tax authorities in each country in which they operate.

CbCR 规则有效运作的一个关键机制是 CbCR 在不同税务机关之间的自动交换，无需 MNE 集团向其每个运营所在地的主管税务机关提交 CbCR。

The CbC MCAA was established to provide rules and procedures to allow countries implementing CbCR to automatically exchange the reports prepared and filed by the reporting entity of an MNE group with the tax authority in its country of tax residence with the tax authorities of all jurisdictions in which the MNE group operates.

CbC MCAA 旨在提供规则和程序，使实施 CbCR 的国家能够与 MNE 集团经营所在各辖区的税务机关，自动交换由 MNE 集团报告实体编制并向其税务居民国税务机关提交的 CbCR。

With Thailand due to become a signatory of the CbC MCAA a MNE group with the reporting entity [e.g., ultimate parent entity (“UPE”)] located in Thailand will be able to submit a CbCR through the Thai tax authority, which can then be exchanged with tax authorities in countries in which the MNE group operates. Conversely, Thailand will also be able to receive the CbCR for a MNE Group which carries on business activities in Thailand from the tax authority where the reporting entity of the MNE Group is tax resident. The ability to exchange the CbCR in the above scenarios assumes that the countries are both signatories of the CbC MCAA or have a bilateral agreement. If no exchange relationship exists, then in the case of a MNE Group with a reporting entity outside of Thailand and operations in Thailand, the Thai Revenue Department has the right to request the CbCR from the local operation. The Thai operation has 60 days in which to provide the CbCR following the request.

随着泰国即将成为 CbC MCAA 的签署国，如某一 MNE 集团申报实体 [如：最终母公司实体(以下简称“UPE”)] 位于泰国，集团向泰国税务机关提交 CbCR 后，该 CbCR 将随后可以向 MNE 集团各经营所在国的税务机关进行交换；相应地，针对在泰国开展业务活动的 MNE 集团，泰国税务机关也可以通过交换从集团申报实体所在税务居民地的税务机关获得 CbCR。上述交换 CbCR 的情形，是假设交换国双方都是 CbC MCAA 的签署国或有双边协议。如果不存在交换协议，那么对于在泰国运营但申报实体在泰国境外的 MNE 集团，泰国税务局有权要求泰国当地运营实体提交集团 CbCR。泰国实体在收到提交要求后，有 60 天的时间准备并提供。

Some specific illustrations:

具体示例：

- A MNE group’s UPE is located in Japan and it has two Thai subsidiaries. Japan and Thailand are signatories of the CbC MCAA. The CbCR for the MNE group will therefore be exchanged with the Thai Revenue Department from Japan under the CbC MCAA. It will not be necessary for either of the Thai subsidiaries to lodge the CbCR with the Thai Revenue Department upon request.

一家 MNE 集团的 UPE 位于日本，在泰国有两家子公司。日本和泰国是 CbC MCAA 的签署国。因此，泰国税务局将可以根据 CbC MCAA 从日本的交换获得该集团的 CbCR 报告。两家泰国子公司均将无须应要求向泰国税务局提交 CbCR 报告。

- A MNE group’s UPE is located in the U.S.A. and it has a Thai subsidiary. The UPE lodges the CbCR with the U.S. tax authority. The U.S. is not a member of the CbC MCAA and there is currently no bilateral agreement for exchange of CbCR between the U.S. and Thailand. The Thai subsidiary will be required to submit the CbCR to the Thai Revenue Department within 60 days after request by the Thai Revenue Department.

一家 MNE 集团的 UPE 位于美国，并有一家泰国子公司。UPE 向美国税务局提交 CbCR 报告。美国不是 CbC MCAA 的成员国，且目前美国和泰国之间没有 CbCR 交换的双边协议。在泰国税务局提出要求后，该泰国子公司须在 60 天内向泰国税务局提交 CbCR 报告。

Next, Thailand will sign the CbC MCAA and will start the exchange of information with the affiliated countries for the first time in June 2023. CbCR for the years commencing on or after 1 January 2021 are capable of being exchanged under the CbC MCAA.

泰国接下来将签署 CbC MCAA，并将于 2023 年 6 月首次启动与其他签约国之间的信息交换。2021 年 1 月 1 日或之后年份的 CbCR 将可以根据 CbC MCAA 进行交换。

Update of Thailand's APA Guidelines 泰国 APA 指南的更新

Thailand has had an active Advance Pricing Agreement (APA) program for many years with the first bilateral APAs agreed with Japan in 2005. The legal basis for the bilateral APA is provided under relevant Double Tax Agreement and guidance on the APA application and process is provided in a document found in the Thai Revenue Department website: [Guideline on APA process en.pdf \(rd.go.th\)](#). The Thai Revenue Department has recently updated the APA guidelines on its website. Two major changes were made to the Guidelines are as follows:

泰国多年来一直积极开展预约定价协议（以下简称“APA”）安排，2005 年与日本达成了第一项双边 APA。双边 APA 的法律依据为相关税收协定，APA 申请和流程的指导文件，可以查看泰国税务局网站的下列文件：[Guideline on APA process en.pdf \(rd.go.th\)](#)。泰国税务局最近在其网站上更新了该 APA 指南，其中两项主要更新如下：

- Roll-back period – A taxpayer can now apply for a roll-back period, which cannot be more than 2 accounting periods prior to the start of the period covered under the APA application. This is subject to facts and circumstances of each individual taxpayer. The new guidance requires that the taxpayer who intends to apply for the roll-back period explain their intention together with the reason(s) of necessity at the start of each APA application. The taxpayer should also provide the supporting evidence showing that the facts and circumstances of the requested roll-back period are comparable to the APA period.

追溯期 - 纳税人现可以申请追溯期，该追溯期不能超过 APA 申请涵盖期间开始前的 2 个会计期间，视每个纳税人的实际情况确定。新的指南要求，纳税人如打算申请追溯期，应在每个 APA 申请开始时对相关意图和必要性进行解释。纳税人还应提供支持材料，证明其申请的追溯期内的事实和情况与 APA 申请期间类似。

- Criteria for rejection of the APA application: The Revenue Department may reject the APA application any time before the Revenue Department and the foreign tax authority conclude the agreement if at least one of the below criteria is met:
APA 申请的拒绝标准：在泰国税务局和外国税务机关达成协议之前的任何时间内，如果出现以下一项或以上情形的，泰国税务局可以拒绝 APA 申请：

- 1) The taxpayer did not submit sufficient information for APA consideration 纳税人没有为 APA 提交足够的信息；
- 2) The APA application has been rejected by other foreign tax administrations APA 申请已被其他外国税务机关拒绝的；
- 3) The taxpayer's business is new and there is insufficient information on the Thai market 纳税人的业务是新业务，且泰国市场信息不足；
- 4) There is evidence of or suspicions over tax avoidance or other unusual activities without business reasons 有证据表明存在避税行为或避税嫌疑，或者存在其他无商业理由的异常行为；
- 5) There is evidence of non-compliance regarding the APA arrangement; and 有证据表明 APA 安排不合规；与

6) Other reasons for which the Revenue Department may reject the APA such as 泰国税务局可能拒绝 APA 的其他原因, 例如;

- The taxpayer did not submit an annual compliance report for the APA without reasonable causes-纳税人未提交 APA 的年度合规报告, 且无合理理由;
- Insignificant business transactions as compared to the taxpayer's business transactions with other countries; and 与纳税人在其他国家的商业交易相比, 其在泰国的商业交易规模微不足道
- No transfer pricing risks 无转让定价风险

Notwithstanding the above, the TRD may reject the roll-back period if the facts and circumstances of the taxpayer during the roll-back period are incomparable to the facts and circumstances during the APA arrangement period.

此外, 如果纳税人在追溯期的事实和情况与 APA 安排期间的不可比, 泰国税务局可以拒绝追溯期申请。

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