



TP Alert

Required Contents for Local TP Documentation

Thailand's transfer pricing laws require that companies or partnerships with revenues of not less than Thai Baht 200 million prepare documentation to support that their related party transactions are priced on an arm's length basis. This documentation is required to be submitted within a certain period of receiving a notification letter from the tax assessment officer as approved by the Director - General of the Thai Revenue Department.

The Thai Revenue Department has now released Notification of the Director-General of the Revenue Department on Income Tax (No. 407) (“Notification”) in relation to the required contents of the local transfer pricing documentation (“Local File”) to be submitted. Regulations in relation to Master Files and Country-by-Country reporting are not covered by this Notification and are expected soon.

Local File Required Contents

A summary of the information required to be included in the Local File by the company or juristic partnership required to submit the documentation (“reporting entity”) is as follows:

Business Overview

- A description of business operations, value chain including key trading partners, key competitors, business strategies and industry analysis
- Local organization chart, including the number of employees
- Shareholding structure for the related companies or juristic partnerships that have transactions with the reporting entity
- Description of any business restructuring which took place between the related parties during the accounting period or prior period and the impact on profitability of the restructuring.
- Description of intangible property transfers between related parties and the impact on profitability on the reporting entity.

Related Party Transactions and TP analysis

- List of related party transactions showing category, counterparty and their country and amount of transaction
- For the related party transactions listed above, which are considered material, a description of the transactions and pricing policies.
- List of the all the agreements for the material related party transactions, including summary of the main information and pricing conditions.
- Analysis of the functions, assets and risks for the reporting entity and related parties in relation to material related party transactions, above, and any differences compared to the prior accounting period.
- Rationale for the selection of the transfer pricing method(s) for the material related party transactions, including reasons for the rejection of other transfer pricing methods, and identification of the tested party for the purposes of applying the transfer pricing method.
- Details of the benchmarking analysis to apply the selected transfer pricing method(s), including:
 - Search process and sources for identifying the comparable transactions or companies/partnerships
 - List of the final set of comparable transactions or companies/partnerships
 - Arm’s length range based on the profit level indicator selected

The financial information for the related party transaction(s) tested should also be included.

The tax assessment officer may also request other information apart from that listed above for the purposes of the transfer pricing analysis in notification letters approved by the Director-General of the Revenue Department.

Consistency with OECD Local File

The Notification is generally consistent with the suggested Local File contents provided in the OECD Transfer Pricing Guidelines (2017). 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 transfer pricing method(s), it is necessary to also provide reasons for why the other transfer pricing methods were not selected.

Materiality

The Notification requires that only material related party transactions be analysed in detail. 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 transfer pricing laws. It therefore remains to be seen whether the Thai Revenue Department will provide formal guidance on their interpretation of what constitutes materiality.

Exemption from benchmarking analysis requirement

The Notification provides that a reporting entity may not prepare the benchmarking analysis for companies or juristic partnerships which satisfy the following criteria:

- (a) Their operating revenue for the accounting period does not exceed THB 500 million;
- (b) They did not enter into any related party transactions with entities that are subject to different corporate income tax rate(s) compared to the reporting entity;
- (c) They did not enter into any related party transactions with entities that are incorporated overseas; and

- (d) They did not have any tax losses incurred in the previous accounting periods which were carried forward as expenses in the calculation of taxable net profits for the purpose of corporate income tax during the reporting accounting period. Further, the related counterparty that entered into such transaction(s) should also not have any tax losses carried forward.

In brief, therefore, a Thai company which does not have more than THB 500 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. They are, however, required to prepare the Local File including the other required information. Interestingly, they are still required to select an appropriate transfer pricing method for their material related party transactions. Given that the process of selecting an appropriate transfer pricing method, itself, technically requires a benchmarking analysis it will be difficult to fully comply with the requirements without the performance of this analysis.

In addition, care should be taken in arriving at a conclusion that benchmarking analysis is not required based on a one-sided analysis of a domestic related party transaction. There may be situations where one Thai company satisfies the above conditions and does not need to prepare benchmarking analysis, but if the related Thai counterparty does not satisfy the conditions (e.g. greater than THB 500 million operating revenues), then they may need to prepare benchmarking analysis for the transaction(s) between the two entities. For example, if Company A provides management services to its Thai group of companies, including Company B which manufactures for sale to third parties, and Company A has operating revenues of THB 250 million and the other conditions are satisfied, then it does not have to prepare benchmarking analysis for the management services. However, if Company B has operating revenues of THB 600 million and its only related party transaction is the receipt of management services from Company A, then it would need to prepare a benchmarking study to test the management services (assuming the transaction is material).

APAs

In addition, entities which 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 transfer pricing method selection for the covered transactions under the APA in the Local File. If an entity which 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 Notification requires that the Local File submitted to the Revenue Department be in the Thai language. This will create an additional compliance obligation for foreign MNCs operating in Thailand who will necessarily need to prepare both English and Thai versions of the documentation.

Submission

The Local File will need to be submitted to the tax assessment officer who issued the notification letter at the Large Business Tax Administration Division or Area Revenue Office that the company or juristic partnership is situated. The reporting entity will receive an official receipt number to evidence the submission as complete.

Effective date

The Notification is effective for accounting periods beginning on or after 1 January 2021. Given that Thailand's transfer pricing laws were effective for periods on or after 1 January 2019, this means that companies would have had to follow the previous TP documentation guidance, Departmental Instruction Paw 113/2001, in preparing the documentation for the 2019 and 2020 years to date.

Final thoughts

After the introduction of the transfer pricing rules in 2019, the release of the Local File requirements to clarify the Thai Revenue Department's position is a welcome step forward. It is important that companies clearly understand the new Local File reporting requirements. Failure to prepare Local Files or preparation of incomplete Local Files may result in the imposition of a fine of up to THB 200,000. In addition, preparation of a Local File which does not contain thorough and supportable transfer pricing analysis may expose the entity to transfer pricing adjustments, which would result in additional tax, penalties and interest surcharges.

There are still regulations expected soon to address other transfer pricing related matters, including Master Files, Country-by-Country reporting and APAs. We will keep you informed of these developments as they occur.

An unofficial English translation of the Notification is attached [here](#).

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