THAILAND

TRANSFER PRICING LANDSCAPE

While specific transfer pricing provisions did not exist in the Thailand's tax laws, general provisions however, existed in the Revenue Code of Thailand which dealt with the gratuitous transfer or transfer with unreasonably low consideration.

May 2002: The Thai Revenue Department (TRD) introduced transfer pricing guidelines through the Departmental Instruction No. Paw 113/2545 (DI 113) that served as a guidance to the revenue department officers while performing tax audits and did not carry force of law.

April 2010: Guidance on Advance Pricing Agreement (APA) Process was issued.

May 2015: The Thai Cabinet approved a draft Act amending the Revenue Code that will introduce specific transfer pricing provisions into the Revenue Code. However, the final Act is yet to be issued.

Introduction

According to DI 113, a company or a juristic partnership established under the Thai law or under a foreign law, must calculate its net profit for the purpose of corporate tax returns as stated in section 65 of the Revenue Code.

Transfer pricing guidelines have been introduced for determining the market price of domestic as well as cross-border transactions between related parties.

Related party

Related parties include business entities in a group of juristic corporations or partnerships with direct or indirect relationships in management, control, or capital between themselves.

Arm's length principle

Arm's length price under Thai law is basically market price i.e. value of consideration, service fee or interest that independent contracting parties would charge in case of transfer of goods, provision of services or lending money, etc. which is of the same type as the related party transaction on the same date. The instruction's definition of market price is consistent with the 'arm's length principle' mentioned in the OECD's Guidelines.

'Independent contracting parties' are contracting parties with no direct or indirect relationship in management, control or capital between themselves.

Transfer pricing documentation

Contemporaneous documentation

The following details must be documented and kept at the office of the taxpayer:

- Ownership structure;
- Financial projections/budgets;
- Business plans/strategies;
- Financial results;
- Rationale for entering into international transactions;
- Pricing policies and product profitability;
- Market overview;
- Function, assets and risks analysis;
- Rationale for choosing a particular method.

Submission of documentation

Currently, taxpayers are not required to submit documentation on an annual basis. However, it must be submitted in case of an enquiry from TRD within 15-30 days of request.

Once the new specific transfer pricing provisions are enforced, taxpayers would have to prepare transfer pricing documentation on an annual basis and file it within 150 days after the end of the accounting year.

Exemptions and thresholds

No specific exemptions and thresholds have been prescribed till date for the purpose of documentation requirements.

Selection of method

Transaction methods such as comparable uncontrolled price method, resale price method and cost plus method are preferred for determining the market price.

In case the aforesaid methods cannot be applied to arrive at the market price, taxpayers may choose any other internationally accepted method (i.e. profit split method or transactional net margin method) which is commercially appropriate/suitable to the facts and circumstances of the case.

Selection of comparables

Comparables may be selected from internal as well as external sources.

Internal comparables, if available are preferred by the revenue officers. However, in the absence of internal comparables, external comparables can be used for determining the market price. Business Online is a well known local database used to extract data of external comparables.

As companies established under the Thai law are required to file their audited financial statements with the Ministry of Commerce, collating financial information of such companies is feasible.

TRD strongly prefers local comparables. However, in the absence of such local comparables; foreign comparables from similar markets may be accepted by the TRD.

Certain specific transactions

Intra-group services

Presently, intra-group service transactions are a matter of concern for the TRD. Taxpayers need to substantiate that the services have actually been received and the fees paid are commensurate with the benefits received.

Generally, fees paid for intra-group services are allowed as deductible expenses, if it is demonstrated that these expenses are incurred for the purpose of business in Thailand.

Reporting and compliance

Related party disclosures along with annual corporate tax return

No specific disclosures are required for transfer pricing, except for a few questions in the annual corporate tax return which the taxpayer needs to answer if related transactions deviate from the market price.

The due date for filing corporate tax return is within 150 days from the closing date of their accounting periods.

Transfer pricing audit/assessment

Generally, there is no specific transfer pricing audit; it is undertaken as a part of the normal tax audit process. The TRD begins scrutiny by issuing a letter along with transfer pricing questionnaires requesting taxpayers to provide the requisite information/documents on the adopted transfer pricing practices under their supervision.

The scrutiny of transfer pricing during a tax audit or inquiry in Thailand is common and the probability of an audit of a multinational company is considerably high.

The risk areas that can trigger transfer pricing queries during general tax audits are:

- Payment of royalties/management fees,
- Interest income/expense on intra-group funding,
- Persistent losses,
- Inconsistent profit/loss patterns,
- Profit margin drops lower than the industry average,
- Different prices/mark-ups for similar transactions,
- Substantial related party transactions,
- Sudden drop in profits after expiration of tax holiday, etc.

In case of a disagreement at the documentation review stage, dispute can be settled by filing a tax appeal within 30 days after receiving the notice of assessment. In case of any failure at this level, an appeal may be filed before the Tax Court.

Penalties and other consequences of non-compliance

Currently, there is no explicit penalty for transfer pricing assessments or for not having transfer pricing documentation.

However, for tax shortfalls in general, a penalty of 100% or 200% of the tax shortfall and a 1.5% per month surcharge may be imposed, which is capped at 100% of the tax shortfall.

Once the new specific transfer pricing provisions are enforced, failure to prepare/file transfer pricing documentation shall attract a penalty of maximum THB 400,000. Thailand will then become the only ASEAN country that will impose penalties if the documentation required by law is not prepared or submitted according to the prescribed timelines.

APA and MAP procedures

Taxpayers in Thailand, who enter into transactions with affiliates who are residents of Thailand's treaty partners may apply for a bilateral advance pricing agreement (APA) for a period of three to five years. Only bilateral agreements can be applied for under Thai regulations.

To apply for an APA, taxpayers shall submit a written document of intent along with the other relevant documents to the Director General of the Revenue Department. Further, no filing fees have been prescribed for filing an APA application.

Since April 2010, there has been a substantial increase in the number of APA applications in Thailand, the majority of which are signed with Japan.

A taxpayer may also apply for Mutual Agreement Procedure (MAP) within the applicable time limit as per the relevant tax treaty.

BEPS/CbC applicability

Thailand has formally not accepted any recommendations of OECD and G20 Base Erosion and Profit Shifting (BEPS) Project. However, it may adopt some measures of the BEPS project.

It's worthwhile to note that even if Thailand does not implement Country-by-Country (CbC) reporting requirements, companies headquatered in Thailand and having a presence in BEPS nations may be required to file CbC report in these nations.

SUMMARY OF TRANSFER PRICING REQUIREMENTS

Effective from	May 2002
Compliance requirements	• No specific disclosures; except for a few questions in the annual corporate tax return; • Contemporaneous documentation required in the event of an enquiry from the TRD. Once specific transfer pricing provisions are enforced; documentation will be required on an annual basis and it must be filed within 150 days after the end of the accounting year.
Penalties	General penalties for tax shortfall, however once specific transfer pricing provisions are applicable, penalty of a maximum of THB 400,000 shall be levied for failure to prepare/file transfer pricing documentation.
Method and preference for comparable	OECD has defined five methods, giving first preference to transaction-based methods. Preference for internal comparables.
Peculiar features	The New Revenue Code, once finalised, will introduce specific transfer pricing provisions under Thai Law and shall assume significance.
Safe harbour and APA	Bilateral APA available, however, safe harbour is not available.
BEPS/CbC applicability	Currently, not applicable.

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Key contact

Maulik P. Doshi
Partner, Transfer Pricing

E: maulik.doshi@skpgroup.com
T: +91 22 6617 8041
M: +91 98205 40027

skpgroup.com

linkedin.com/company/skp-group

twitter.com/SKPGroup

facebook.com/SKPGroupIndia

plus.google.com/+SKPGroup

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