



Transfer Pricing
Country Summary

Thailand

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1. Introduction

The Thai Transfer Pricing Guidelines are not very detailed. They provide only very general guidance on how to determine the market price. The Supplementary Clarification on the Determination of Market Price for Multinational Enterprises is the only other guideline issued by the Revenue Department to date which provides further clarification on how to apply the concepts contained in the Thai Transfer Pricing Guidelines.

Most of the concepts adopted by the Thai Transfer Pricing Guidelines are those advocated by the OECD. The Thai Transfer Pricing Guidelines adopt the arm's length principle, and require that a functional analysis and economic analysis of related-party transactions be performed, and transfer pricing methodologies be rejected and selected, etc. The Thai Transfer Pricing Guidelines are modelled after the Australian guidelines.

The OECD Guidelines (1995, 2010, and 2017) are used only as a reference. Thailand is not a member of the OECD, but is a member of the UN. The recommendations made by the OECD Guidelines are not necessarily followed by Revenue officers. The Revenue Department normally follows the OECD recommendations, but the recommendations are taken into account only in so far as they are not in conflict with Thai tax law.

However, The Thai cabinet accepted the country's decision to join the BEPS Inclusive Framework as an associate on May 16, 2017. As one of the minimal standards, Action 13 must be implemented.

Thailand was first reviewed under the phase I peer review process, wherein three recommendations were made. The phase I peer review report recommended

- (i) that Thailand finalize its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process;
- (ii) that Thailand take steps to put in place an exchange of information framework that allows automatic exchange of information and have qualifying competent authority agreements (QCAAs) in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites; and
- (iii) Thailand takes steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. According to the second and third peer review reports, Thailand has not implemented measures to address these issues since the 2017/2018 peer review and, as such, the recommendations have remained unchanged.

2. Laws & Regulations

a) References to OECD/EU/Local Rules

The legal framework for transfer pricing was introduced by the Revenue Department, in Section 65 bis (4) (7), Section 65 ter, and Section 70 of the Thai Revenue Code, Double Tax Agreements between Thailand and other countries and the Standard Accounting No. 37 and 47.

There are no specific transfer pricing provisions under the Revenue Code. However, assessment officers can adjust the net profits by applying some general provisions of the Revenue Code. Examples of such provisions include:

- Section 65 bis (4): assessment officer has the power to assess transactions at market value;
- Section 65 ter (13): expenses not exclusively expended for profit making are to be disallowed;
- Section 65 ter (14): expenses not exclusively expended for the purpose of a business in Thailand are to be disallowed.

On May 16, 2002, transfer pricing guidelines were published by the Thai Revenue Department, under the Departmental Instruction No. Paw. 113/2545, providing guidance on the determination of the market price, methodology in calculating the market price, establishment of the market price and the required transfer pricing documents. In general, Thailand follows the OECD Transfer Pricing Guidelines in general.

On 3 January 2018, the Thai Cabinet approved the draft transfer pricing act (the Draft Act) that will add specific transfer pricing provisions to the Revenue Code. This approval follows a public hearing held in July 2017 on the first draft Act that was approved in principle in May 2015.

b) Definition of Related Party

The Departmental Instruction No. Paw. 113/2545 adopts the OECD Guidelines regarding the definition of the related party. Specifically, a related party is defined as:

- I. A legal entity that either directly or indirectly holds 50% or more of the total shares of another legal entity;
- II. A legal entity of which 50% or more of its total shares are held either directly or indirectly by a shareholder or partner that also directly or indirectly holds 50% or more of total shares of another legal entity; or
- III. A legal entity that has a dependent relationship with another legal entity in terms of capital, management, or control, to the extent that one entity cannot be operated independently from the other.

c) Nature of Transfer Pricing Documentation

Thailand is not a member of the OECD.

However, Thai TP guidelines generally follow the OECD Guidelines, including allowing all of the methods acceptable under the OECD Guidelines. The OECD Guidelines are not binding on the TRD; however, they may provide useful guidance, covering areas not addressed by DI 113.¹

Thailand joined the Base Erosion and Profit Shifting Inclusive Framework (BEPS IF) in June 2017,^[15] which allows interested countries and jurisdictions to collaborate with OECD and G20 members on developing standards on BEPS-related issues, as well as reviewing and monitoring the entire BEPS package's implementation.²

d) Tax Havens & Blacklists

Not applicable.

e) Advance Pricing Agreement (APA)

Only Bilateral APA is accepted. The effective period of an APA is between 3 to 5 accounting periods. In essence, the last day of the first accounting period must be within or after the date of the submission of APA application.

To apply for an APA, a number of documentations are required. The detailed description is stated under the guidance on APA process of the Thai Revenue Department. Any documents related to APA must be provided by the taxpayer to the Revenue Department within 7 working days from the date the documentation have been delivered to the foreign tax authority.

The duration to conclude a bilateral APA is within 3 months since the date of filing the request. If the taxpayer wishes to withdraw the APA application, it must do so via a written request before the APA becomes effective. In some cases, the Revenue Department can terminate the APA because it is extremely time-consuming in Thailand.

No fee is charged on APA.

¹ [ey-worldwide-transfer-pricing-guide-10-september-2020 \(2\).pdf](#), p. 628.

² [Document - Thailand - Transfer Pricing - 13. Documentation Requirements - Tax Research Platform - IBFD](#), para. 13.1.

f) Audit Practice

Tax audit on transfer pricing is common in Thailand. A company can be audited in terms of transfer pricing if it fails to disclose required and/or related-party transaction documents or does not meet the requirement for transfer pricing filing to the tax authority. Since 2006, the Thai Revenue Department has enforced more audit activities in transfer pricing.

In general, the Thai Revenue Department conducts company visits to examine business operations. If any transactions triggering further scrutiny, such as the deductibility of expenses resulting from intragroup transactions, further verification will be carried out.

The main issues that could lead to a transfer pricing investigation are: net operating loss position, profit margins that differ substantially from other comparable industries; and high intercompany charges for management services, royalties, intangible assets, or cost allocation, etc.

3. Transfer Pricing Documentation

a) Level of Documentation

The following documents are required under the Departmental Instruction No. Paw. 113/2545:

1. Documentation indicating the structure and relationship between business entities within the same group, including the structure and nature of business carried on by each entity;
2. Budgets, business plans and financial projections;
3. Documentation indicating taxpayers' business strategies as well as the reasons for adopting such strategies;
4. Documentation indicating sales and operating results and the nature of its transactions with business entities within the same group;
5. Documentation indicating the reasons for entering into international transactions with business entities within the same group;
6. Pricing policies, product profitability, relevant market information and profit sharing of each business entity. Consideration should be given to functions performed, asset utilized and risks assumed of the related business entities;
7. Documentation supporting selection of a particular pricing method;
8. Where several methods are considered, documentation indicating details of the methods apart from the method stated in 7 and the reasons for rejection of these methods. These documents should be created at the same time the decision is made to select the method in 7;
9. Documentation used as evidence indicating the negotiation positions taken by the taxpayer in relation to the transaction with business entities within the same group and the basis for those negotiating positions;
10. Other related documentation in determining the transfer price (if any).

b) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given.

c) Company Analysis

A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in

the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

d) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities that are performed by the related parties relevant to the Intercompany Transactions under review, the tangible and intangible assets that are employed and the risks that are borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines at paragraph 1.51.

e) Choice of Transfer Pricing Method

The following methods are accepted:

- Comparable uncontrolled price (CUP) method
- Resale price method-Cost plus method
- Profit split method
- Transactional net margin (TNMM) method.

The most appropriate method to calculate the market price should be selected.

f) Economic Analysis – Benchmark Study

Financial information of companies is available on the database portal as comparables. Foreign comparables are also accepted at tax authorities, if the Thai database is not sufficient. Local comparables are preferred though.

g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalizes the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the “conduct of parties” the prevailing concept.

h) Financial Statements

Half-year company income tax returns and year-end corporate income tax returns are required for all taxpayers. Taxpayers must also provide audited financial accounts and a statement of directors with their year-end tax return, as well as pay any corporate income tax due. This database provides financial information to revenue officials, but it does not provide financial information to taxpayers.

The Ministry of Commerce's Business Registration Department is a source of financial information that taxpayers can access. Private and public enterprises must file audited financial statements with the Ministry of Commerce within one month of the shareholders' approval of the accounts, which must be done within four months of the accounting period's end. These financial data, as well as the notes to financial statements, are available to the public. Although the data may not be highly thorough, the database is extensive in terms of its coverage of taxpayers. Regrettably, the data is currently preserved on microfilm, which cannot be removed from the Ministry. As a result, it cannot be retrieved electronically; photocopying is the only way to obtain information.

Due to the difficulty of acquiring financial data and the formats in which it may be retrieved, numerous electronic databases available through subscription, as well as databases of government agencies or companies, are also employed to find prospective comparables. These databases, which provide brief descriptions of the companies in the database, can be searched electronically for information. Some include financial summaries, financial highlights, and other information. Financial information, on the other hand, is

occasionally discovered to deviate from that presented in audited financial statements. As a result, after the prospective comparables have been identified, the Ministry of Commerce's audited financial statements and notes to the financial statements should preferably be obtained for further screening.

Furthermore, the accuracy of the data presented in such a database (e.g., categorization of companies into various International Standard Industrial Classification (ISIC) codes, categorization of expenses, and descriptions of the nature of the business), its search engine, and its completeness are all heavily relied upon (or it is usually added as a caveat in the benchmarking report). What is described in the front of the financial statements may not necessarily reflect the genuine nature of the business of the company under review, according to the author's experience. Also, when expense items are considered selling and general administration expenses for transfer pricing analysis, they may be categorized as other expenses by such a database. The Revenue officer will reject the comparables that were found to be different from the tested party, despite the taxpayer's argument that this is the only accessible information. This may affect the arm's length range identified by the taxpayer.³

i) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists, and the required languages are demonstrated. This information can be seen respectively for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

	Prepare or File?	Format	Deadline	Notification Deadline*	Threshold* (Yes/No)	Local Language (Yes/No)*(If "No", it can be filed in English)
Corporate Income Tax	File	Form CIT 50	150 days after the end of the company's accounting period	No	No	Yes
Master File	N/A	N/A	N/A	N/A	N/A	N/A
Local File	Prepare	Special Format	within 60 days upon request by Revenue officers, except for the first request whereby the time is extended to 180 days	N/A	Yes	No
CbCR	File	OECD format	12 months from end of accounting period for Thai	12 months after the last day of	Yes	No

³ [Document - Thailand - Transfer Pricing - 3. Comparability Analysis - Tax Research Platform - IBFD](#), para. 3.5.

			multinational enterprises (MNEs) and 60 days from receipt of notification from Revenue Department for foreign MNEs obliged to file CbC report	the reporting fiscal year		
Local form	File	TP Disclosure Form	within 150 days after the end of the accounting period	N/A	Yes	No
Annual Accounts	Prepare	TFRS	within four months of the end of the fiscal year	N/A	No	Yes
Segmented P&L	N/A	N/A	N/A	N/A	N/A	N/A
* Thailand has signed the MCAA agreement for the filing of CBCR on 9 December 2022						
* Thailand does not request as much and detailed information from smaller and less complex enterprises (SMEs included) than it does from large and complex enterprises.						

j) Mandatory Language

APA documents must be in Thai. English is also accepted unless otherwise required by the tax officers to be translated in Thai.

k) Notification Requirement

Not applicable.⁴

l) Record Keeping

The documentation should be contemporaneous.

m) Penalties and Interest Charges

There is no specific transfer pricing penalty. General Corporate Tax penalty scheme is applied. A penalty of up to 100 percent of the additional corporate tax and interest surcharges of 1.5 percent per month may apply on outstanding tax. No interest is charged on penalties. Tax underpayment will be charged with the normal corporate tax rate of 20%.

⁴ [Document - Thailand - Transfer Pricing - 13. Documentation Requirements - Tax Research Platform - IBFD](#), para. 13.2.4.



Failure to provide the required transfer pricing disclosure statement or the filing of incomplete or false statements in the disclosure statement (and supporting documents) will result in penalties of Baht200,000 (US\$6,200).

A 100 percent tax penalty can be charged on the additional tax payable, if any. This penalty can be reduced up to 50% or even waived if the assessment officer is of the opinion that the taxpayer had no intention of evading taxes, and has cooperated fully during the tax audit.