



cutting through complexity

GLOBAL TRANSFER PRICING SERVICES

Global Transfer Pricing Review

Thailand

kpmg.com/gtps

TAX



Thailand



KPMG observation

The reduction of the corporate income tax rate from 30 percent to 20 percent in 2013 has increased the Thai Revenue Department's (TRD) focus on tax compliance and tax collection transfer pricing is one of the major audit areas by the TRD as the tax assessment can be significant. Based on the current practice, the transfer pricing issues are not limited to the taxpayers who are under the supervision of the Large Taxation Organization (LTO) at the TRD headquarters but also those under the supervision of the local tax offices could be questioned by the local tax authorities. KPMG in Thailand has observed more and more cases where the local tax authorities rather than the headquarters of TRD have questioned transfer pricing issues during their routine tax audits which may lead to detailed transfer pricing audits. There is an increase in investigations of inter-company service transactions.

As Thailand is going to enter into the ASEAN Economic Community (AEC) in December 2014, the TRD has expressed its intention to introduce transfer pricing tax reform. In recent years, other ASEAN countries have made transfer pricing documentation mandatory; while it is still not mandatory in Thailand. It is possible that transfer pricing documentation will be required by law in the future. In addition, in the past year the TRD cooperated with the other country's revenue departments to exchange knowledge in the area of the tax administration and collection. Cross-border transactions are one of the key issues around which this knowledge sharing takes place. Increasingly, transfer pricing is one of the most pressing issues in Thailand.

Basic information

Tax authority name

Krom Sumpakorn (Thai Revenue Department (TRD)).

Citation for transfer pricing rules

General laws:

- sections 65 bis (4), (7)
- section 65 ter (13), (14), and (15).

Specific rules:

Departmental Instruction Paw 113/2545. The Guidance on the Advance Pricing Agreement (APA) Process (APA Guidance) was issued in April 2010.

Effective date of transfer pricing rules

Specific rules issued in May 2002 as guidelines for TRD officers. No legal effect.

What is the relationship threshold for transfer pricing rules to apply between parties?

Direct or indirect relationship with regard to management, control or capital.

What is the statute of limitations on assessment of transfer pricing adjustments?

Five years from due date or filing date. Transfer pricing assessments follow the statute of limitations on income tax

return audits, which is 5 years from due date of tax return, or from filing date if failure to file by due date.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

No specific requirement for transfer pricing disclosure. However, there are questions in the annual corporate income tax return (yes or no answers) which the taxpayer is required to answer in relation transactions departing from market price.

What types of transfer pricing information must be disclosed?

The questions in the tax return that require the taxpayer's confirmation are:

- has the business sold products, services or property, lent money, or leased out property, without value received or with received value below market price in amounts considered substantial?
- has the business bought assets, or incurred expenses in acquiring such assets, at a value above normal price in an amount considered substantial?

What are the consequences of failure to prepare or submit disclosures?

Not applicable (the questions in the annual corporate income tax return, as mentioned, have to be answered as part of the tax return).

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

No.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?

The taxpayer's documentation is generally requested in the event of a transfer pricing audit. The documentation should shift the burden of proof to the tax authority and mitigate the risk of the use of secret comparables.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

The transfer pricing guidelines suggest that the documentation should be prepared at the time the transactions are entered into, but there is no statutory filing requirement. Generally, the documentation will be submitted upon

request of the tax authorities. If the documentation is not available, the tax authorities, in practice, will probably grant an extension of time for submission.

When a transfer pricing study is prepared, should its content follow Chapter V of the Organisation for Economic Co-operation and Development (OECD) Guidelines?

Thailand is not an OECD member. However, Thailand's transfer pricing guidelines follow similar concepts to the OECD.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?

Yes.

Is there a priority among the acceptable methods?

No.

If there is no priority of methods, is there a "best method" rule?

No.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, how long does the taxpayer have to submit its documentation?

A normal timeline in the tax authorities' requested letter is between seven and 15 days, but, in practice, a request for an extension is possible.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

If a conclusion cannot be reached at the documentation review and a notice

of assessment is issued, the dispute may be settled by filing a tax appeal within 30 days after receiving the notice of assessment. If the taxpayer fails to obtain a successful resolution at this level, the taxpayer may appeal to the tax court.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. General income tax penalties – i.e. a surcharge of 1.5 percent per month of additional tax payable up to the amount of tax will be imposed. Penalties of up to 100 percent of additional tax payable will be added if the adjustment is made as a result of a tax audit summons.

To what extent are transfer pricing penalties enforced?

Always (if the adjustment results in additional tax).

What defences are available with respect to penalties?

None, if there is tax payable. It is necessary to negotiate with the tax authorities at the documentation review to reduce the assessed tax amount so that the penalties can be reduced accordingly.

What trends are being observed currently?

Tangible property transactions are still the main target but the tax authorities are more and more focused on intra-group services transactions as well. If there are intra-group fees for services or for intangible property, there may be a question about tax deductions. The taxpayers are often required to demonstrate that the services have been received and are relevant to the Thai operations, and that the consideration is not excessive.

Special considerations

Are secret comparables used by tax authorities?

This is possible.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Yes. If the taxpayers do not provide a set of local comparable companies during the transfer pricing audits, the transfer pricing audit team will conduct their own search for local comparables and use the local benchmarking results as a starting point to challenge the taxpayers.

Do tax authorities have requirements or preferences regarding databases for comparables?

No requirements but the tax authorities use Business Online which is a well-known local database.

What level of interaction do tax authorities have with customs authorities?

None.

Are management fees deductible?

Yes. Generally, management fees are deductible if the taxpayer can substantiate the expenses incurred for business and the fees are not excessive.

Are management fees subject to withholding?

Yes, although they may be exempt under tax treaty.

Are year-end transfer pricing adjustments permitted?

Yes. It is strongly recommended that the year-end transfer pricing adjustment should be performed before closing the financial statements for the period. Care must be taken if the transfer pricing adjustment results in reduced profitability in Thailand.

Other unique attributes?

None.

Other recent developments

In the past, the TRD sent only an invitation letter requesting transfer pricing documentation as well as inviting the taxpayers to meet them at the tax office. However, since 2011, the tax authorities have sent transfer pricing questionnaires together with the invitation letter to taxpayers to request information relating to related party transactions. In addition, the transfer pricing audit may be initiated by the general tax audit team (separate from the transfer pricing tax team), who will then refer the case to the transfer pricing tax team.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?

No experience.

When may a taxpayer submit an adjustment to competent authority?

No formal rules.

May a taxpayer go to competent authority before paying tax?

Where a client requires double taxation relief, the same can be obtained from the tax authorities prior to paying the tax.

Advance pricing agreements

What APA options are available, if any?

Bilateral.

Is there a filing fee for APAs?

No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

No.

Please provide some information on how successful the APA program is and whether there are any known difficulties?

Since the APA guidance has been issued in April 2010, there have been more requests for APAs. With more experience and the requirement to submit the APA application in both Thai and English, the Thai tax authorities should begin to review and process the APAs faster. The APA working team has been requesting factory tours, in the case of manufacturing subsidiaries in Thailand, in order to obtain more understanding of functional and risk profiles as well as manufacturing process for comparable selection.

Language

In which language or languages can documentation be filed?

Documentation: Thai. English is acceptable but a translation into Thai may be requested.

APA application: Thai and English.

KPMG in Thailand

Kullakattimas Benjamas

Tel: +66 2 677 2426

Email: Benjamas@kpmg.co.th

Pinmaneekul Abhisit

Tel: +66 2 677 2470

Email: abhisit@kpmg.co.th

As email addresses and phone numbers change frequently, please email us at transferpricing@kpmg.com if you are unable to contact us via the information noted above.

kpmg.com/socialmedia



kpmg.com/app



The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2014 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

The KPMG name, logo and "cutting through complexity" are registered trademarks or trademarks of KPMG International.

Designed by Evalueserve.

Publication name: Global Transfer Pricing Review

Publication number: 133196

Publication date: June 2014