

# Taiwan



## KPMG Observation

Beginning with the 2005 tax year, companies have been required to prepare transfer pricing reports or substitute reports to document their compliance with arm's-length principles.

The five district offices of the National Tax Administration have completed case selection and audit procedures for 2005 to 2007 transfer pricing reports. The selection of 2008 cases is ongoing.

The tax authorities are currently stepping up the pace of transfer pricing audits as a way to actively seek additional tax revenue. As a result, special transfer pricing audit teams have been formed by the tax authorities to conduct more comprehensive and in-depth transfer pricing audits than in the past. KPMG in Taiwan has observed that the number of cases selected has increased along with the intensity of the tax authorities' review.

## Basic Information

Tax authority name

Ministry of Finance (MOF).

Citation for transfer pricing rules

Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm's-Length Transfer Pricing.

Effective date of transfer pricing rules

28 December 2004.

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

Ownership of 20 percent or more based on voting power or share capital; under common control; control and management; head office and its branch offices; joint-venture.

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

Five years from the tax return filing date if the return is filed in a timely fashion. In situations where a taxpayer fails to file the annual tax return within the statutory deadline or is involved in tax fraud or tax avoidance, the statute of limitations will be extended to seven years. The statutory deadline for filing the annual corporate tax return is the last day of the fifth month after the end of each fiscal year.

## 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)?

Yes. The taxpayer must disclose related-party transactions on forms filed with income tax returns.

What types of transfer pricing information must be disclosed?

The types of information to be disclosed include, but are not limited to:

- legal structure
- detailed information on related parties
- controlled transaction types and respective amounts
- whether the taxpayer has signed advance pricing agreements (APAs) with tax authorities in Taiwan or foreign jurisdictions and the relevant information
- whether a transfer pricing study has been prepared.

## 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?

Taxpayers must, at the time of filing annual income tax returns, maintain an extensive list of documentation and a transfer pricing study to support the controlled transactions.

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

The benefit of preparing a transfer pricing study is that the tax authorities shall assess the arm's-length result of the controlled transactions pursuant to the relevant regulations and assess the taxable income based on the transfer pricing study.

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 study must be prepared contemporaneously with the tax return and must be submitted within one month of receipt of a notice of investigation sent by the tax authorities.

## What are the major elements required or recommended to be included in a transfer pricing study?

At a minimum, the transfer pricing study should include the following items:

- industry and economic condition analysis
- function and risk analysis of each entity engaged in the controlled transactions
- application of arm's-length principles set forth in Article 7 of the Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm's-Length Transfer Pricing
- identity of and information on comparable companies selected
- comparability analysis for application of best method rule
- a best method analysis, including a description of the transfer pricing methods selected, the reasons for selection, and description of other methods considered and the reason(s) they were not selected
- the transfer pricing methods adopted by other entities engaged in the controlled transactions and relevant information
- the arm's-length results of applying the best method, including relevant data of comparables, adjustments made to eliminate differences with comparables, assumptions made, arm's-length range derived, conclusion on arm's-length nature, adjustments made according to the arm's-length range.

## Transfer Pricing Methods

### Which transfer pricing methods are acceptable?

Comparable uncontrolled price method, comparable uncontrolled transaction method, resale price method, cost plus method, profit split method, and comparable profits method.

Advance approval must be obtained from the Ministry of Finance for applying unspecified methods.

## Is there a priority among the acceptable methods?

No hierarchical priority among the acceptable methods.

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

Yes.

## 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?

Upon request, taxpayers are required to produce the documentation within one month from the date of receipt of notification. In special circumstances, taxpayers are also given the option of a one-time extension of an additional month.

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

Yes, the taxpayer has the option to resolve disputes through the administration remedy procedure.

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

Yes. If the transfer pricing audit results in income adjustments and assessments, a penalty of up to 200 percent of the underpaid tax amount (where the taxpayer has filed their tax returns timely) will be imposed under any one of the following situations:

- where the reported controlled transaction prices are 200 percent or more, or 50 percent or less of the arm length prices as assessed by the tax authority
- where the income adjustment assessed by the tax authority reaches ten percent of the taxpayer's assessed annual income and three percent of the assessed annual net sales

- where the taxpayer fails to provide a transfer pricing study and cannot provide other documentation to prove that its transfer price result is at arm's-length
- other situations where the tax authority finds evidence of underreporting income and the amount underreported is considered significant.

## To what extent are transfer pricing penalties enforced?

The Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm's-Length Transfer Pricing were just promulgated in 2005. Even though there have been some transfer pricing audits, there have not been many incidents of penalties imposed on transfer pricing adjustments. This is mainly because the audits are still on going or the assessment amounts were lower than the penalty threshold.

## Can transfer pricing penalties be reduced or removed for reasons other than documentation?

No.

## Special Considerations

### Are secret comparables used by tax authorities?

Based on our observation of the current practice, secret comparables are not used by tax authorities.

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

Currently, low.

### Are management fees deductible?

Generally speaking, expenses will be deductible for Taiwan income tax purposes only if they are necessary and relevant to a business' operation. If the management fee paid to the offshore service provider is deemed to be necessary and relevant to the Taiwan entities' operations, then it would be deductible by Taiwan entities for Taiwan income tax reporting purposes.

### Are management fees subject to withholding?

From the offshore entity's perspective, the management fee it receives will most likely be deemed as Taiwan-sourced income. Thus, it will generally be subject to 20 percent withholding tax at source unless mitigating measures under domestic law or tax treaty are available.

### Other unique attributes?

According to the relevant transfer pricing rules, if a transfer pricing adjustment results in a decrease of the tax liability in Taiwan, no adjustment is allowed.

## Other Recent Developments

None.

## Tax Treaty/Double Tax Resolution

### What is the extent of the double tax treaty network?

Minimal.

### 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?

No formal rules.

## Advance Pricing Agreements

### What advance pricing agreement (APA) options are available, if any?

Unilateral, bilateral, and multilateral.

### Is there a filing fee for APAs?

No.

## Language

### In which language or languages can documentation be filed?

In general, all the required documentation is to be provided in Chinese. However, to alleviate the taxpayers' compliance cost, English language documentation could be acceptable if approved by the tax authorities.

## KPMG in Taiwan

### Taipei

#### **Sherry J. Chang**

Tel: +886 2 8101 6666 ext: 04590

Email: schang1@kpmg.com.tw

#### **Willis Yeh**

Tel: +886 2 8101 6666 ext: 02281

Email: wyeh@kpmg.com.tw

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