

Thailand



KPMG Observation

Through a review of taxpayers' documentation over the past years, the tax authorities have now gained more experience in transfer pricing issues. Although there have been no major developments in regulation since the first transfer pricing guidelines issued in May 2002, the position of the tax authorities has been established based on their experience in transfer pricing audits. However their position can be influenced depending upon the relevant facts of each taxpayer's situation. To deal with the audit effectively, appropriate transfer pricing documentation should be prepared beforehand.

Manufacturing and trading multinational companies may be the target for audit but audits do not tend to concentrate only on tangible property transactions. If there are inter-company 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 whereby the considerations are not excessive.

Basic Information

Tax authority name

Krom Sumpakorn (Revenue Department).

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.

Effective date of transfer pricing rules

Specific rules issued in May 2002 as guidelines for Revenue Department 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; filing date. Transfer pricing assessments follow the statute of limitations on income tax return audits, which is five 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 confirm in relation to the 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, 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?

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 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.

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

Functional analysis, industry analysis, company overview, selection of method, description of comparables (local comparables are required).

Transfer Pricing Methods

Which transfer pricing methods are acceptable?

Transaction methods: comparable uncontrolled price; resale price; cost plus. Profit-based methods: profit split; transactional net margin method; comparable profits method.

Is there a priority among the acceptable methods?

None.

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?

Normal practice is one month but 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 the 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. surcharge of 1.5 percent per month of additional tax payable up to 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).

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

Not applicable.

Special Considerations

Are secret comparables used by tax authorities?

Possible.

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. May be exempt under tax treaty.

Other unique attributes?

None.

Other Recent Developments

Transfer pricing audits were recently intensified. The tax authorities are requesting more detailed information, especially in the area of breakdown of financial results.

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?

No formal rules.

Advance Pricing Agreements

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

Bilateral.

Is there a filing fee for APAs?

No.

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.

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