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Overview

DFDL (Thailand) Limited, Taxand Thailand

Founded in the Lao PDR in 1994, DFDL has grown into one of Southeast Asia's leading legal and tax advisory firms, with over 150 lawyers and advisers across 11 offices throughout the region. Since establishing a permanent presence in Bangkok in 2005, our Thailand practice has become an integral part of DFDL's regional platform, delivering seamless legal and tax solutions for both domestic and cross-border matters.

Our multidisciplinary team of Thai-qualified and international lawyers, tax and transfer pricing advisers works collaboratively across jurisdictions to provide clients with fully integrated legal and tax services. We are particularly recognized for our strength in cross-border transactions involving Thailand and the CLMV countries (Cambodia, Lao PDR, Myanmar, and Vietnam), offering clients a single point of contact for complex, multi-jurisdictional projects.

Our Transfer Pricing ("TP") team provides end-to-end transfer pricing services, including:

- TP policy design and implementation for intragroup transactions;
- Preparation of TP documentation (Local File, Master File, and Country-by-Country Reporting);
- Benchmarking and comparability analyses;
- TP advisory, risk assessment and health-checks;
- Assistance in TP audits and dispute resolution;
- Advance Pricing Agreement ("APA") and Mutual Agreement Procedure ("MAP") support; and
- Financial transaction and intercompany financing advisory.

General: Transfer Pricing Framework

Thailand's transfer pricing framework is governed by domestic legislation codified in Sections 71 bis and 71 ter of the Revenue Code, introduced by the Revenue Code Amendment Act B.E. 2561 (2018) and effective for accounting periods beginning on or after 1 January 2019. These provisions transformed TP from an administrative concept into a statutory compliance obligation, empowering the Revenue Department to assess related-party transactions by reference to the arm's length principle.

The OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration ("OECD Guidelines") are not directly incorporated into Thai law, but they serve as an important reference framework for TP.

Transfer pricing rules apply to both domestic and cross-border related-party transactions, covering a broad range of transaction types including the sale and purchase of goods, provision of services and management fees, royalties and intellectual property licensing, intercompany financing and guarantees, and cost allocation and shared service arrangements.

Accepted Transfer Pricing Methodologies

Thailand follows the OECD Guidelines in recognising five standard transfer pricing methods. There is no prescribed hierarchy; the most appropriate method is selected based on the facts and circumstances of the controlled transaction, the availability of reliable information, and the degree of comparability achievable with uncontrolled transactions. The five accepted methods are:

- Comparable Uncontrolled Price ("CUP") Method;
- Resale Price Method ("RPM");
- Cost Plus Method ("CPM");
- Transactional Net Margin Method ("TNMM"); and
- Profit Split Method ("PSM").

Taxpayers may use an alternative method not listed above only where they can demonstrate that none of the five standard methods is appropriate and that the alternative method selected is the most appropriate for the transaction.

Should taxpayers opt to adopt other methods, the taxpayer must submit a formal written notification (accompanied by a preliminary justification of the selected methodology) to the Director-General of the Thailand Revenue Department ("TRD") within the accounting period in which they commenced using the method.

Transfer Pricing Documentation Requirements

Companies or juristic partnerships that enter into transactions with related parties and whose annual revenue exceeds THB 200 million are required to file a transfer pricing disclosure form (the "TP Disclosure Form") along with the annual corporate income tax return, with the Revenue Department within 150 days after the end of their accounting period.

Such taxpayers are also required to prepare and retain TP documentation (i.e., Local File and Master File) to support the arm's length nature of their related-party transactions. The documentation must be in place by the annual corporate income tax return filing deadline and must be submitted to the Revenue Department within 60 days of receiving a written request.

Thailand's TP documentation framework broadly follows the OECD's three-tiered documentation approach:

Local File: A transaction-level file documenting detailed information on related-party transactions, including functional and, where applicable, benchmarking studies.

Master File: A group-level file providing an overview of the multinational enterprise ("MNE") group's business, value chain, transfer pricing policies, and financial and tax positions.

There is no requirement to file the Local File or Master File with the Revenue Department unless specifically requested.

Country-by-Country Report ("CbCR"): Required for MNE groups with annual consolidated revenue of THB 28 billion or more. The CbCR must be filed by the Thai parent entity, or where the parent is a foreign entity, by the Thai constituent entity acting as a surrogate or under secondary filing obligations. CbCR must be filed within 12 months of the end of the reporting fiscal year.

Local Jurisdiction Benchmarks

The TRD has not issued any formal written regulation/ guidelines on preference for local / regional comparables for purposes of TP benchmarking studies. However, in practice, the TRD has a preference for local comparables.

Though the TRD has not issued any formal written regulation/ guidelines on the period of review, multiple-year testing (i.e., three-year or five-year testing) is commonly used, as opposed to single-year testing.

In addition, a 'benchmarking analysis exemption' has been provided under DGN 407, whereby a benchmarking study is not required if:

- The taxpayer's total revenue for the fiscal year is less than THB 500 million;
- The taxpayer has only domestic-related party transactions;
- Neither the taxpayer nor any of the relevant counterparties have carryforward losses for corporate income tax computation purposes; and
- All parties are subject to the same corporate income tax rate.

Furthermore, a benchmarking study is not required if the transactions are covered transactions under a bilateral Advanced Pricing Agreement ("APA") concluded with the TRD, and the relevant fiscal year is covered by the APA.

Focus on Financial Transactions

Under Sections 71 bis and 71 ter of the Thai Revenue Code, intercompany financial transactions, including loans, cash pooling arrangements and financial guarantees, are subject to the arm's length principle in the same manner as other related-party transactions.

Thailand has not issued specific TP legislation or safe harbour rules governing financial transactions; accordingly, the general transfer pricing provisions apply to these arrangements.

Although Thai legislation does not prescribe a specific methodology for analysing financial transactions, the TRD recognises the OECD Guidelines as an important reference framework.

Accordingly, taxpayers commonly evaluate intercompany financing by considering the accurate delineation of the transaction, the borrower's creditworthiness (including the effect of implicit group support where relevant), whether the amount and tenor of the financing are consistent with those that independent parties would have agreed, and whether the interest rate and other financial terms are supported by comparable uncontrolled transactions.

Similarly, intercompany financial guarantees should be assessed to determine whether they provide an economic benefit to the borrower and, where appropriate, whether an arm's length guarantee fee should be charged.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

Under Thailand's current framework, TRD only accepts applications for BAPA.

BAPAs may be concluded between the Thai competent authority and the competent authority of a treaty partner where permitted under the relevant Double Tax Agreement.

Taxpayers seeking an APA are required to submit an application to the TRD, supported by information on the proposed covered transactions, transfer pricing methodology, functional analysis and relevant financial information. The APA process is administered by the TRD under its APA guidelines.

The APA covered period can be up to five years. As for roll-back, taxpayers can apply for roll-back for up to two years, provided that the circumstances of the roll-back period are identical to those of the APA period.

In practice, the timeframe for completing a BAPA depends on factors such as the complexity of the transactions, the completeness of the taxpayer's submission and coordination with the treaty partner's competent authority.

Transfer Pricing Audits

Transfer pricing has become an increasingly important area of focus for the TRD. Although the TRD has not published an exhaustive list of audit triggers, based on practical experience, TP audit risk is generally higher for:

- The Thai company has been consistently operating at a loss for several consecutive years.
- The Thai company has inconsistent business performance, such as alternating profits and losses from year to year, with no tax payments over several years.
- The total net profit is lower than the industry average, as concluded by TRD.
- The Thai company is operating at a loss after the expiration of the Thailand Board of Investment promotion period.
- Significant related-party transactions including royalty payments, management fees and service charges and related-party financing arrangements.
- Transactions involving entities in low tax jurisdictions.
- The Thai company has undertaken a business restructuring resulting in reduced net profit or losses, leading to lower or no tax payments.

During a transfer pricing review, the Revenue Department may examine not only whether appropriate documentation has been prepared, but also whether the actual conduct of the parties, functions performed, risks assumed and benefits received are consistent with the reported TP outcomes. Accordingly, taxpayers should ensure that their TP policies are supported by both economic analysis and evidence demonstrating the commercial substance of the related-party arrangements.

The Burden of Proof in Transfer Pricing: Theory versus Practice

Under Thailand's transfer pricing framework, the Revenue Department bears the responsibility of demonstrating that the conditions of a related-party transaction differ from those that would have been agreed between independent parties before making an adjustment to taxable income. Section 71 bis of the Revenue Code empowers the assessment officer to adjust income and expenses where related-party commercial or financial conditions are not consistent with arm's length conditions and result in lower taxable profits.

In practice, however, taxpayers may face significant challenges in defending their transfer pricing positions where adequate supporting documentation is not available. Under Section 71 ter of the Revenue Code, taxpayers within scope are required to submit a Transfer Pricing Disclosure Form and maintain transfer pricing documentation. Where requested documentation is not provided within the prescribed period, the Revenue Department may assess the taxpayer based on available information and make adjustments where it considers that the related-party pricing does not comply with the arm's length principle.

Accordingly, maintaining robust and contemporaneous transfer pricing documentation is essential for taxpayers seeking to support their related-party pricing arrangements. Documentation should generally include transfer pricing policies, intercompany agreements, functional analyses, economic analyses and benchmarking studies, together with relevant financial information supporting the pricing methodology applied.

Companies with appropriate internal governance processes, including clearly assigned responsibilities among management, finance, tax and legal functions, are better positioned to demonstrate the commercial rationale and consistency of their transfer pricing outcomes during a tax review.

Transfer Pricing Penalties

Failure to comply with Thailand's transfer pricing disclosure and documentation requirements may expose taxpayers to administrative penalties, tax adjustments and related surcharges.

Failure to file the Transfer Pricing Disclosure Form:

A taxpayer that fails to submit the required TP Disclosure Form within the prescribed timeline may be subject to a fine of up to THB 200,000 under Section 35 ter of the Revenue Code.

Incorrect, incomplete or late Transfer Pricing Disclosure Form:

The Revenue Code does not prescribe a separate fine specifically for a late or incomplete TP Disclosure Form. The same fine of up to THB 200,000 under Section 35 ter of the Revenue Code (referred to above) applies to incorrect, incomplete or late submissions made without a reasonable cause.

Failure to submit transfer pricing documentation upon request:

Taxpayers are required to prepare and maintain transfer pricing documentation and provide such documentation to the Revenue Department upon request. The taxpayer generally has 60 days from the date of receiving the request to submit the documentation, with a possible extension of up to 60 additional days. Failure to provide sufficient documentation may increase the taxpayer's exposure during a transfer pricing review, as the Revenue Department may make an assessment based on available information.

Transfer pricing adjustments:

Where the Revenue Department determines that related-party transactions are not consistent with the arm's length principle, it may adjust the taxpayer's income or expenses under Section 71 bis of the Revenue Code. Any resulting additional corporate income tax liability may be subject to a surcharge of 1.5% per month or fraction thereof under Section 27 of the Revenue Code, capped at the amount of the additional tax payable.

A penalty of 100% of the additional tax assessed may also apply under Section 22, although the penalty may be reduced or waived by the Revenue Department depending on the circumstances.

Local Hot Topics and Recent Updates

Thailand's OECD Accession and the Intensification of TP Scrutiny

Thailand's transfer pricing framework continues to evolve alongside the country's broader efforts to align its legal and regulatory framework with international standards. Following the OECD Council's decision in June 2024 to open accession discussions with Thailand and the adoption of Thailand's Accession Roadmap in July 2024, Thailand is undergoing technical reviews of its legislation, policies and administrative practices against OECD standards. Although the OECD accession process is broader than transfer pricing, it is expected to reinforce Thailand's continued alignment with internationally accepted tax principles and administrative practices.

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For multinational enterprise groups operating in Thailand, TP documentation should remain a key area of focus. Taxpayers should ensure that documentation is robust, contemporaneous and capable of supporting the arm's length nature of the related-party transactions, particularly those involving financing arrangements, royalties, management services and intangible assets. These transaction categories are recognised internationally as areas requiring careful TP analysis under the OECD Transfer Pricing Guidelines.

Global Minimum Tax

Thailand has implemented legislation introducing the OECD/G20 Inclusive Framework's Pillar Two Global Minimum Tax for in-scope multinational enterprise groups, effective from 1 January 2025. Although the Global Minimum Tax operates independently of Thailand's TP regime, TP outcomes may influence the calculation of GloBE income and the jurisdictional effective tax rate. Accordingly, multinational groups should consider TP and Pillar Two analyses together to ensure consistency between TP positions and Pillar Two computations.

Documentation threshold

Master file	Taxpayers with annual revenue exceeding THB 200 million that enter into related-party transactions.
Local file	The taxpayer must submit a Transfer Pricing Disclosure Form along with the annual corporate income tax return.
Country-by-Country Report (CbCR)	A consolidated annual revenue threshold of THB 28 billion applies.

Submission deadline

Master file Local file	To be submitted to the Revenue Department within 60 days of a request (extendable once by up to 60 additional days).
Country-by-Country Report (CbCR)	Filed within 12 months after the end of the reporting fiscal year by the reporting entity where the filing obligation applies.

Penalty Provisions

Documentation – late filing provision	Failure to provide the documentation when requested by the TRD may increase the risk of transfer pricing adjustments. Where an adjustment results in additional tax, the applicable tax penalty and surcharge under the Revenue Code may apply.
Tax return disclosure – late/incomplete/no filing	Failure to comply with the TP Disclosure Form requirement or submission of incorrect or incomplete information without reasonable cause is subject to a fine of up to THB 200,000 under Section 35 ter of the Revenue Code
CbCR - late/incomplete/no filing	Failure to comply with Country-by-Country Reporting obligations, including failure to file the CbCR by the due date, is subject to a fine of up to THB 2,000 under Thailand's CbCR legislation and related regulations.

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