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July 23, 2019

TRANSFER PRICING IN THAILAND

So, I had an informal meeting with an officer of the legal department of the Revenue Department (“RD”) of Thailand earlier this month (July 2019). I understand that the main function of the legal department is to draft new tax laws, e.g. the wording of the recent amendments to the Revenue Code (“RC”) which impacts transfer pricing (“TP”) in Thailand. Specifically, I am referring to the Revenue Code Amendment Act No. 47 (Gov. Gazette, Vol. 135). I would like to share some of questions that I asked and my personal interpretations of the officer’s responses.

Q1. Does TP rules apply to completely Thai domestic transactions as well?

A1. Quite possible. The regime for pricing adjustments includes RC: [Section 38](https://www.rd.go.th/publish/37749.0.html#section38); [Section 65 bis (4)](https://www.rd.go.th/publish/37764.0.html); [Section 65 ter (15)](https://www.rd.go.th/publish/37764.0.html); and Section 71 bis. Departmental Instruction No. Paw 113 is also significant as it provides a guideline for RD officers. It should be noted that none of these rules specify that only international transactions are subject to tax adjustments. For example, even if a transaction is completely contained in Thailand, the RD may become curious if one party has, e.g. a tax holiday under BOI promotions, and the other party to the transaction does not.

Q2. Does the TP-related reporting requirements (“TP Report”) under the new tax code amendment (RC, Section 71 ter, (3), para. 1) apply to ALL companies having revenue of 200 million Baht or more in an accounting period? The wording of the last paragraph of Section 71 ter appears to qualify this by mentioning “… as prescribed in Ministerial Regulations,…”.

A2. At least for now, ALL companies having taxable revenue of 200 million Baht or more in an accounting period are subject to the TP reporting requirements.

Q3. I understand that according to RC, Section 71 ter., para. 2, in addition to above-mentioned TP Report, the RD may, within five years from the date of the TP Report had been filed, send a notice to a taxpayer to submit documents or evidences (“TP Documentation”) showing information necessary to analyze whether related party transactions were in compliance with the tax law requirements. The taxpayer will then generally have sixty (60) days, of receiving such notice, to furnish such TP Documentation. My question is whether such TP Documentation can generally be modeled/structured based on [OECD](https://read.oecd-ilibrary.org/taxation/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-2017_tpg-2017-en#page1) [TP Guidelines](https://www.africataxjournal.com/wp-content/uploads/2018/05/OECD-TPG-Transfer-Pricing-Guidelines-for-Multinational-Enterprises-and-Tax-Administration-July-2017.pdf)  and other [relevant OECD publications](https://read.oecd-ilibrary.org/taxation/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report_9789264241480-en#page1), even though Thailand is not a member of the OECD?

A3. Generally, the RD has nothing against taxpayers using OECD principals, as long as they are appropriate and logical to apply under the given circumstances.

Q4. Does this mean that the taxpayer must adopt the so-called “three-tiered approach” to TP documentation? Namely, does that taxpayer need to prepare all of the following?:

(i) [Master File](https://read.oecd-ilibrary.org/taxation/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report_9789264241480-en#page27);

(ii) [Local File](https://read.oecd-ilibrary.org/taxation/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report_9789264241480-en#page29); and

(iii) [Country-by-Country Report](https://read.oecd-ilibrary.org/taxation/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report_9789264241480-en#page31)

A4. At least the Local file would be necessary for taxpayers to provide the RD with useful information. Whether or not the other two types of documents will be requested would depend upon the size of the taxpayer. We may use revenue threshold amounts as reference to either request or not request such additional documentation.

Q5. Can the TP Documentation be in English?

A5. Generally, it should be in Thai. However, of the tax officer/auditor is comfortable with English, he/she might not request for the documents to be prepared in Thai.

Q6. For external benchmark data, can the taxpayer use international data such as those from RoyaltyStat, Royalty Range, Bureau Van Dijk, etc.?

A6. Generally, no. Thus far, we have only accepted [Thai domestic data](https://corpus.bol.co.th/home/) as provided by [Business Online PCL](https://www.bol.co.th/).

Q7. Somebody told me that RD will NOT accept the [Berry Ratio](https://www.investopedia.com/terms/b/berryratio.asp) as a profit-level indicator. Is this true, and if so, why?

A7. Not true. We do not prohibit the use of the Berry Ratio outright. However, we have never come across a situation where we considered the Berry Ratio to be the most appropriate profit-level indicator.

Q8. Can a taxpayer use international data (e.g. RoyaltyStat) as benchmark data to assess the appropriateness of royalty payments charged to a Thai taxpayer by an offshore related party (e.g. the parent company outside of Thailand)?

A8. It is extremely unlikely that there would be sufficient international data, if any, which is comparable to the tested transaction.

Q9. So, assuming that the Thai company is the tested party, and the Thai company has no internal comparable transactions, would it be acceptable to use the TNMM method on a business segment basis to indirectly, if you will, assess the appropriateness of the amount of royalties charged to that Thai company.

A9. Even if the tested Thai company has only one type of related party transaction (e.g. royalty payments), there is no reason for the RD to reject an analysis, which makes reference to profitability ratios, if indeed comparable, reliable, and sufficient data to test the transaction itself is not available.

Q10. What about other types of transactions, such as technical license fees, contract manufacturing fees, back office support service fees, etc.? Can a Thai company do an analysis of the transaction itself (e.g. apply the CUP method)? I understand that, finally, because you almost never have internal comparable data and because there is no Thai database which provides CUPS, most, if not in all cases, the TNMM approach is used.

A10. Yes. Even if there is one category of transactions (e.g. payment of technical license fees), it is usually the case that finally the TNMM is used.

Q11. What about interest on inter-company loans? Should we use bank rates as a reference?

A11. Probably not. This is because, the terms and conditions on inter-company loans vs. bank loans are typically quite different. Moreover, inter-company loans may have additional features compared to standard bank loans.

Q12. So, even for inter-company loans, it is quite possible to use the TNMM method?

A12. Yes. Quite possible.

I did ask several more questions, but these Q&As were, for me the most relevant. Forgive me if I had misinterpreted anything. Please give me your thoughts and comments on this.

Mitsuru Nishiuwatoko

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